The first meeting of the Constitutional Study Commission was held in Room 15, State Capitol, on Wednesday, October 13, 1971. The Honorable Elmer L. Andersen, Chairman, presided and the following members were present:

Professor Carl Auerbach
Senator Robert Brown
Senator Jack Davies
Representative Aubrey Dirlam
Mr. Orville Evenson
Representative Richard Fitzsimons
Representative O. J. Heinitz
Senator Carl Jensen
Representative L. J. Lee
Representative Ernest Lindstrom
Mrs. Diana Murphy
Justice James Otis
Representative Joseph Prifrel
Governor Karl Rolvaag
Mr. Duane Scribner
Mrs. Joyce Smith
Senator Stanley Thorup

Absent were:

Mrs. Betty Kane
Senator Kenneth Wolfe

The meeting was called to order at 11:30 a.m. and presided over by Honorable Elmer L. Andersen, Chairman.

The Chairman introduced Honorable Wendell R. Anderson, Governor, who greeted the members and thanked them for their willingness to serve. The Governor said he felt that the Commission was going to write an exciting chapter in Minnesota history, and pledged the full cooperation of the Office of the Governor.

Chairman Andersen introduced Dr. Lloyd Short, Professor Emeritus of the University of Minnesota, who had served as Chairman of the 1948 Constitutional Study Commission. Dr. Short, referring to a copy of the report of that Commission gave a brief summary of its organization and

procedure. Dr. Short expressed his best wishes to the Commission members on their undertaking.

Chairman Andersen introduced State Auditor Rolland F. Hatfield who spoke briefly to the members.

Attorney General Warren Spannaus was introduced by the Chairman. Mr. Spannaus also spoke briefly on the need for Constitutional revision and pledged the full support of the Office of the Attorney General to the Commission in its work.

At this point Senator Jensen questioned Dr. Short as to the method he would recommend for Constitutional revision. Dr. Short replied that the 1948 Commission had voted unanimously for the calling of a Constitutional Convention, and that they had reached their conclusion based upon the fact that there were so many changes necessary that the amendment process was too long and circuitous.

Chairman Andersen introduced Representative Aubrey Dirlam, Speaker of the House of Representatives. Mr. Dirlam, referred to subdivision 2 of Laws 1971, Chapter 806, which created the Constitutional Study Commission, noting that the language contained therein leaves open the route the Commission may follow in recommending any changes in the Constitution. Mr. Dirlam expressed appreciation for those who have expressed their willingness to serve and said that he looked forward to a fruitful conclusion of the Commission's deliberations.

The Chairman introduced Senator Stanley Holmquist, Majority Leader of the State Senate, who had served on the 1948 Constitutional Study Commission. The Senator reviewed Constitutional revision since 1948 and asked the members to consider alternative methods of revising our present Constitution that are open to them, the amendment process

or the recommendation that a Constitutional Convention be called.

The Chairman then took up preliminary organizational matters. He stated that when asked to be Chairman, he had sought the help of Mr. David Durenberger to act as Executive Secretary; had enlisted the aid of the Department of Administration for help with the work of the Commission; and that Attorney General Spannaus was willing to assign Special Assistant Attorney General Mike Miles to the Commission for its legal needs. Chairman Andersen asked that if these arrangements were satisfactory, a motion be made to approve the appointment of David Durenberger as Executive Secretary, and the arrangements with the Department of Administration and the Attorney General's Office for other assistance to the Commission.

Senator Jensen moved for the adoption of the following resolution:

> RESOLVED, that Mr. David Durenberger be appointed Executive Secretary, and that he be authorized to make arrangements with the Department of Administration and the Office of the Attorney General for assistance to the Commission.

Seconded by Mr. Evenson, the motion carried.

Senator Tennessen joined the meeting at this point.

The Chairman then called for questions and discussion.

The pros and cons of the methods of revision were discussed. Professor Auerbach suggested that the Commission first define the scope of the study required before establishing a specific work program. He suggested inquiry be made of present and former members of the legislative, executive, and judicial branches of government to determine what problems are created by the Constitution in its present form.

Senator Davies suggested that the Commission divide its work into two parts, one part to deal with form, and the other with the substantive changes to be considered.

Mr. Scribner noted that other groups besides those legally responsible for the laws should be contacted and given an opportunity to suggest to the Commission areas of analysis.

Senator Jensen said that some of the necessary form changes could probably be contained in a housekeeping amendment. The Senator recommended that the Commission start with a steering committee. Representative Prifrel stated that he thought a steering committee would be necessary to establish guidelines and target dates.

Representative Prifrel moved for the adoption of a resolution to establish a steering committee:

> RESOLVED, that the Commission establish a steering committee of seven members chaired by the Chairman of this Commission, and that the Chairman be authorized to appoint six additional members of this Commission to the steering committee with due regard that it be representative of the make-up of the entire Commission.

Seconded by Senator Jensen, the motion carried.

The Chairman raised the question of the time and frequency of the meetings of the Commission. After brief discussion,

> Mr. Prifrel moved that the Commission meet monthly at a specific time; seconded by Mr. Scribner, the motion carried.
>
> A meeting date was discussed.
>
> Upon motion by Representative Lee, a meeting date of the first Thursday of each month was set; seconded by Mr. Rolvaag, the motion carried.
>
> Senator Davies moved that a form revision subcommittee be appointed; seconded by Senator Tennessen, the motion carried.

Senator Davies said that he would prefer that the size and makeup of this subcommittee be left to the Chairman.

At this point, Chairman Andersen introduced Mr. Joseph Bright, Revisor of Statutes, who suggested that the steering committee might wish to look at the numerous proposals for constitutional amendments which his office had prepared over the years.

Chairman Andersen mentioned to the members that the National Municipal League, which operates under grants from the Carnegie Corporation would probably be sending a representative to monitor the work of the Commission.

Chairman Andersen then introduced Associate Justice of the Supreme Court, The Honorable James C. Otis, who spoke briefly to the members, stating that it was his hope that the Commission would be able to do whatever was necessary to see that the changes it suggests are implemented.

Representative Ernest Lindstrom, Majority Leader of the House, and Commission member, was invited to give his comments to the members. Mr. Lindstrom said he thought it was imperative that the Commission proceed with diligence to its task and was hopeful that it would be able to conclude by the deadline that originally was set.

Chairman Andersen suggested to the Commission that it explore the possibility of youth involvement in its work.

There was agreement in this area of youth involvement, it being suggested by various members that student councils of some of the high schools be invited; perhaps Y groups, and church youth groups be given the opportunity of contributing to the work of the Commission.

Chairman Andersen adjourned the meeting at 1:15 p.m.

Elmer L. Andersen
Chairman

The second meeting of the Constitutional Study Commission was held in Room 15, State Capitol, on Thursday, November 4, 1971. The following members were present:

Governor Elmer L. Andersen
Professor Carl Auerbach
Senator Robert Brown
Senator Jack Davies
Representative Aubrey Dirlam
Mr. Orville Evenson
Representative O. J. Heinitz
Senator Carl Jensen
Mrs. Betty Kane
Representative L. J. Lee
Representative Ernest Lindstrom
Justice James Otis
Representative Joseph Prifrel
Governor Karl Rolvaag
Senator Robert Tennessen
Senator Kenneth Wolfe

Absent: Mr. Duane Scribner
Mrs. Joyce Smith
Senator Stanley Thorup

Chairman Elmer L. Andersen called the meeting to order at 2:10 P.M. and presided. The first order of business was a review of the minutes of the first meeting of the Commission. There being no corrections or omissions they were approved as distributed.

The Chairman referred to the proposed Operating Policies and Procedures as developed at the Steering Committee meeting on October 27, 1971. The Chairman determined it was the desire of those present to consider this proposal section by section.

Section I (Organization and Membership of the Commission) No comment.

Section II (Meetings) No comment.

Section III (Agenda) In response to an inquiry as to the opportunity for members to place items on the agenda the Chairman advised there would be no problem and could be done anytime up to preparation of the agenda for the next meeting.

SENATOR TENNESSEN MOVED to amend Section III as follows: An agenda for each meeting of the Commission shall be prepared by the chairman after having considered the requests of Commission members and shall be sent to Commission members at least five days before the meeting.

Seconded by Senator Davies.
MOTION PREVAILED

Section IV (Quorum) No comment.

Section V (Order of Business) No comment.

Section VI (Voting by the Commission) The Chairman stated there was considerable discussion at the Steering Committee meeting attempting to anticipate in advance any difficulty or problems. The Commission considered in detail the Chairman's vote in various instances and the outcome of tie votes.

> REPRESENTATIVE LINDSTROM MOVED to amend Sec.VI, paragraph 1, as follows:
> The vote upon every motion, resolution, or action at a meeting of the Commission shall be entered upon the minutes. Any voting member can demand a recorded roll call on any vote. Any member of the Commission ~~including the chairman,~~ who is present and does not answer to a roll call when his or her name is called a second time, shall be counted as "present, not voting". Affirmative votes from a majority of the members present are required for the Commission to take action. ~~However,~~ The Chairman shall vote last. In case of a tie vote, when the other members have cast their votes or have been counted as "present, not voting", the chairman shall cast his vote for the purpose of breaking the tie.
>
> Seconded by Senator Tennessen.
> MOTION PREVAILED.

At this point Mrs. Murphy and Representative Fitzsimons joined the meeting.

Section VII (Minutes) No comment.

Section VIII (Rules of Procedure) Considerable discussion evolved concerning reconsideration.

> GOVERNOR ROLVAAG MOVED to amend Sec. VIII as follows:
> The proceedings of the Commission shall be governed by Robert's Rules of Order except that a motion to reconsider may be made by a member on the prevailing side, or in the event of a tie vote, by any member, and such a motion may be made only at the same meeting at which the action was taken, or at the next succeeding meeting.
>
> Seconded by Mr. Evenson.
> MOTION PREVAILED

Section IX (Resolutions and Motions) The Chairman clarified the intent stating that matters of general policy would be in resolution form distributed ahead of time, and specific actions should be done at Commission meetings.

Section X (Public Hearings) In reply to an inquiry the Chairman stated all hearings will be public. He also explained the purpose of having consent of the Chairman or Commission is to avoid a small group holding hearings on its own. Discussion pertaining to where notice would be posted followed.

REPRESENTATIVE LEE MOVED to amend Sec.X B-2, as follows: Notifications shall be posted in the Commission Office and distributed by the Commission at least ten days before the hearing.

Seconded by Mrs. Kane.
MOTION PREVAILED

Section XI (Committees) Mrs. Kane suggested the second and third sentences be reversed, which was accepted by consent without motion.

Section XII (Acceptance and Disposition of Gifts) The Chairman explained that the money appropriated may be inadequate.

REPRESENTATIVE LINDSTROM MOVED to adopt the Operating Policies and Procedures as amended.

Seconded by Senator Wolfe.
MOTION PREVAILED

Chairman Andersen explained Item I-B (Staffing) stating the Commission's demands on the Department of Administration were too great and as a result the Steering Committee had hired a full-time secretary subject to approval of the Commission.

REPRESENTATIVE FITZSIMONS MOVED to hire Mrs. Betty Rosas as secretary.

Seconded by Senator Davies.
MOTION PREVAILED

Item C (Letter of Inquiry) In response to the request of the Chairman Commission members supplied additional names to whom the letter will be sent.

Item D (Bulletin System) Chairman Andersen called for comments or opposition to the sample bulletin which had been included in the packet distribution to all Commission members. There being none the proposed format for a bulletin system will be followed.

Item E (Youth Involvement) Senator Brown mentioned briefly a variety of possible approaches and stated his subcommittee will meet and report to the next Steering Committee meeting.

Item II (Appointment of Structure and Form Committee) Chairman Andersen stated as an outcome of discussion at the Commission's last meeting he appointed the following to serve on this Committee: Justice Otis, Chairman; Senator Davies; and Representative Heinitz.

Item III (Election of Vice-Chairman and Secretary) The Chairman agreed with the Steering Committee's recommendation the Commission elect these officers.

Senator Tennessen nominated Professor Auerbach for Vice Chairman.
Mr. Evenson nominated Governor Rolvaag for Vice Chairman.
Professor Auerbach withdrew in favor of Governor Rolvaag.

REPRESENTATIVE HEINITZ MOVED nominations be closed.

Seconded by Mrs. Kane.
MOTION PREVAILED
The Chairman declared Governor Rolvaag elected Vice Chairman.

Senator Jensen nominated Mrs. Kane for Secretary.
Mrs. Kane withdrew.
Professor Auerbach nominated Senator Brown for Secretary.
Representative Lindstrom nominated Mrs. Murphy for Secretary.
Senator Brown withdrew in favor of Mrs. Murphy.

There being no further nominations the Chairman declared Mrs. Murphy elected Secretary.

Item IV (Report of Executive Secretary) Mr. Dave Durenberger commented the Letter of Inquiry for input into the Commission is important and limited time-wise. The Steering Committee hopefully will put together a recommended work program at its meeting November 30th. He stated national organizations have been contacted for ideas and help. The bibliography compiled by the Legislative Library listing materials available to Commission members has been distributed. He invited the members to make suggestions relative to any other areas we should be covering.

Chairman Andersen replied to an inquiry concerning finances stating the Chairman authorizes expenses, and that recommendations may come from the Steering Committee. The Department of Administration has an account set up. Reimbursements for Commission members will be made for out-of-pocket expenses and mileage at 10¢ per mile. Representative Fitzsimons explained the current policy for reimbursing legislators, which is $25 for each full committee meeting attended during interim.

Chairman Andersen urged all members to make suggestions in areas of their greatest concern to the Steering Committee, which in turn will bring in recommendations to the next Commission meeting as to the procedure to get into the substance of our assignment.

The Chairman declared the meeting adjourned at 4:10 P.M.

Elmer L. Andersen
Chairman

The third meeting of the Minnesota Constitutional Study Commission was held in Room 15, State Capitol, on Thursday, December 2, 1971. The following members were present:

Honorable Elmer L. Andersen, Chairman
Senator Robert Brown
Senator Jack Davies
Representative Aubrey Dirlam
Mr. Orville Evenson
Representative Richard Fitzsimons
Representative O. J. Heinitz
Senator Carl Jensen
Mrs. Betty Kane
Mrs. Diana Murphy
Justice James Otis
Representative Joseph Prifrel
Mr. Duane C. Scribner
Senator Stanley Thorup
Senator Kennth Wolfe

Absent: Professor Carl Auerbach
Representative L. J. Lee
Representative Ernest Lindstrom
Honorable Karl Rolvaag
Mrs. Joyce Smith
Senator Robert Tennessen

A quorum being present, the Chairman called the meeting to order at 2:10 P.M. and requested approval of the minutes of the November Commission meeting, mailed previously to the members. Justice Otis requested a correction in the listing of members present which was done without motion. The minutes were then accepted as corrected.

REPORT OF STRUCTURE AND FORM COMMITTEE: (Agenda Item 2) Senator Davies reported this Committee plans to relocate provisions of the Constitution, improve the language where appropriate, and consolidate related material into appropriate articles and sections. These changes will not be substantive. Justice Otis stated the Committee will report to the Commission as soon as possible but will require at least ninety days.

Representative Dirlam and Senator Thorup joined the group at this point.

REPORT OF STEERING COMMITTEE - WORK STUDY PLAN: (Agenda Item 3) Chairman Andersen reviewed the Committee's report and made the following recommendations:

That Committees be established in the following areas of study:

1 - Amendments (Article XIV)
2 - Natural Resources
3 - Transportation (Articles XVI & XIX)
4 - Legislature
5 - Bill of Rights (Articles I & XII)
6 - Finance
7 - Inter-Governmental Relations & Local Government
8 - Public Education
9 - Executive

That each committee analyze its area of responsibility by research, hearings or other methods; and

That if any committee sees the need for the formation of a task force the Committee so recommend to the Commission.

Chairman Andersen solicited comments and suggestions relative to the report. Mr. Evenson requested each member have a major assignment but have opportunity to sit in on other committee meetings. The Chairman stated that all members would receive notices of all meetings and would have an opportunity to participate at any meeting. Mr. Scribner and Justice Otis expressed the need for a committee on Judiciary, even though this is included in an amendment to be presented to the electorate in November 1972.

At this point Mrs. Murphy joined the meeting.

Discussion followed concerning the Commission's position relative to the amendments the Legislature has recommended for approval by the electorate in the 1972 general election. Chairman Andersen mentioned that the Commission will be studying these same areas as they study the Constitution as a whole. After some discussion the Chairman summarized members' concensus as follows: The Legislature has applied its best judgment to the specific amendments. It is not the responsibility of the Commission to take a position for or against these amendments. However, in the event that the Commission study later develops support for the changes recommended by the Legislature, the Commission can, at such later time, decide whether public support by the Commission for the amendments would help their passage.

MOTION BY MR. SCRIBNER that committees of three be appointed by the Chairman on subjects recommended by the Steering Committee with the addition of a committee on Judiciary. Seconded by Representative Prifrel.

MOTION PREVAILED.

The Chairman urged each member to submit immediately his choices of committees in order of priority. Following discussion on the make-up of committees the Chairman stated he will consider appointing one senator, one representative and one citizen member to each committee.

Reference was made to the Analysis of Responses to our Letter of Inquiry, together with other letters received very recently, (Agenda Items 3a-e) and also to the work-study book prepared by the staff for each Commission member.

REPORT OF YOUTH INVOLVEMENT: (Agenda Item 4) Senator Brown gave a report of the two meetings held, citing four possible means of involving youth:

1-Research papers on Constitutional Change
2-Constitutional Change as a Debate or Oratory Topic
3-Simulated Constitutional Change Sessions
4-Direct Youth Input through mail and hearings

After a discussion and general acceptance of the recommendations by the Committee, the Chairman stated the decisions on procedure to be followed would be left to this Committee working with the staff.

REPORT OF STEERING COMMITTEE ON BUDGET: (Agenda Item 5) The Commission reviewed the "bare-bones" budget. Mr. Scribner and Representative Fitzsimons informed the Commission of a Constitutional Convention to be held in North Dakota in January. Mr. Scribner suggested the Commission consider the possibility of sending a representative to observe, which would require a budget item. After further discussion it was recommended that the Executive Secretary arrange to bring one or two persons who have been involved in the North Dakota project to our January Commission meeting.

A discussion concerning the deficit in the proposed budget led to the appointment of a committee consisting of Representative Dirlam, Representative Lindstrom, and Senator Wolfe, to explore the possibility of having the expenses of the secretary and legislators paid through a legislative fund.

MOTION BY MR. EVENSON to approve the budget as outlined. Seconded by Senator Davies.

MOTION PREVAILED.

During the discussion on the above motion it was suggested by Senator Jensen that the Commission travel to Lincoln, Nebraska for one or two days and hold hearings concerning the pros and cons of a unicameral legislature, mentioning

this would involve a budget item. The Chairman stated he will refer this suggestion to the Committee on Legislature for recommendation and added there is some money budgeted for special projects.

The Chairman reported the Steering Committee's recommendation there be a Final Report Committee appointed to begin accumulating data early, guide committees in presenting reports and keep them moving towards a deadline.

MOTION BY REPRESENTATIVE PRIFREL to have a Final Report Committee appointed. Seconded by Mrs. Kane.

MOTION PREVAILED.

Following announcements made by the Chairman the meeting was adjourned at 4:15 P.M.

Elmer L. Andersen
Chairman

File

The fourth meeting of the Minnesota Constitutional Study Commission was held in Room 15, State Capitol, on Thursday, January 6, 1972. The following members were present:

Honorable Elmer L. Andersen, Chairman
Professor Carl A. Auerbach
Senator Robert J. Brown
Rep. Aubrey W. Dirlam
Mr. Orville J. Evenson
Rep. Richard W. Fitzsimons
Rep. O. J. Heinitz
Senator Carl A. Jensen
Mrs. Betty Kane
Rep. L. J. Lee
Rep. Ernest A. Lindstrom
Mrs. Diana Murphy
Hon. James C. Otis
Rep. Joseph Prifrel
Hon. Karl F. Rolvaag
Mrs. Joyce Hughes Smith
Mr. Duane C. Scribner
Senator Robert J. Tennessen
Senator Stanley N. Thorup

A quorum being present the Chairman called the meeting to order at 2:05 P.M. and called on Professor Auerbach for a report concerning the procurement of law students to do research for the Commission. Professor Auerbach introduced six students who were present and interested in this project, and explained they would receive credit on an independent study basis but receive no reimbursement. He stated he hoped to get some members of the law faculty interested also. Chairman Andersen expressed appreciation to Professor Auerbach and the students, and to the law school for giving academic incentives for this project.

The Chairman expressed appreciation to the two guest speakers, Dr. Samuel Gove and Mr. C. Emerson Murry, for their willingness to explain constitutional revision in their states. He then introduced Dr. Gove from the Institute of Government and Public Affairs, University of Illinois, Urbana, Illinois.

Dr. Gove gave a very interesting presentation concerning the history and events leading up to the adoption of the Illinois Constitution on December 15, 1970, stating the next and most important step following adoption of a new Constitution is implementation. A question and answer period followed.

Q-How were the delegates elected?
A-On a non-partisan basis, two from each Senate District. We had a primary runoff. Total delegates, 116.

Q-What were the principal issues about constitution-making that the delegates were primarily concerned about?
A-There is no model constitution. Concern was to take out as much detail as possible from the old constitution. An illustration: prohibition on special legislation-the old constitution stated special legislation is prohibited and went on to list 22 examples. The new simply states no special legislation is permitted. The general attitude was to take things out-take out mandates.

Q-What were the principal substantive changes made? What were the limitations as to revenue?
A-As interpreted by law, could not have income tax. Had a debt limit of 5% for local government. Today there are 6400 local government units, many created to get away from debt limit. This was taken out. Illinois is not a home rule state. Very restricted use of Dillons's rule. Would advise Committee on Local Government to review Illinois experience. Very controversial issue. Home rule provisions say everything is local unless state preempts-can be done by 60% vote. Chicago Democratic organization wants no limits. Legislature has attempted to preempt. Its possible every community of 25,000 could license doctors. This is argument. New in Constitution: State Board of Elections, State Board of Education, Strong discrimination penalties concerning rental property, employment, and handicapped.

Q-Would it not have been better to leave Board of Education out?
A-It can be appointed or elected, its up to the Legislature. The Catholic church didn't want to get into church-state issue at Convention but preferred to let Legislature and Court fight it out.

Q-Does Illinois have constitutional iniative?
A-No. Did provide for legislative article alone. If some decide they want to go to a unicameral legislature or reduce size, people can pass petition and get it on ballot. All other changes must initiate in Legislature.

Q-What did you do on Judicial article?
A-Very little. The Judicial article was a big issue in the 1964 ballot over elected or appointed judges. Not a clear provision in the Constitution. Seperate question and voters had a chance to say whether elected or appointed. Convention abolished personal property tax as of 1979.

Q-Concerning the matter of the four issues on the ballot, were they all defeated?
A-It depends where you stand - I lost all four! Look at Haaii, 23 amendments, 22 passed, all except 18 year old voters.

Q-Did you have committee reports before Convention and were citizens on them?
A-Only issue oriented reports done by academic scholars.

Q-Did first Commission get into provisions that should be in Constitution?
A-Criticized it without saying what it should be. The revenue article was adequate.

Q-Did Convention bring out need for reform without saying what should be done?
A-Yes. Considered Maryland's method which was a draft constitution, turned it down.

Q-Did all recommendations come out of Convention meeting for one year?
A-The delegates were only paid for eight months so didn't stay in business much after that.

Q-What about discretionary veto?
A-Executive Article Committee of the Convention listened to political scientists. Political scientists said we needed more strangth in the Governor. They suggested one nice thing would be to give him more power such as to reduce appropriations. Five or six states have this and it would be a good thing to have. One of the first reductions made was in the appropriation to the University of Illinois although the veto was used on others too. We also have amendatory veto. If the Governor sees some technical errors in an appropriation bill he can send it back to the Legislature saying if corrections are made but no other changes he will approve.

Q-What kind of campaigining occurred to get Constitution adopted?
A-Very much bi-partisan, needed support of both parties. Several pressure groups supported a new Constitution although labor didn't. Public opinion polls were taken, 58% in favor of a new Constitution. The campaign strategy was a low-profile campaign. It was felt the League of Women Voters and others for it would get out and vote. If issues were raised this would get alot of people out to vote who didn't understand the issues.

Q-What was labor's objection to the call for Conventtion?
A-One labor leader was opposed to the 1922 Convention outcome-revenue article was restricted.

Q-Did lot-profile campaign cause low voter turnout?
A-Yes. Substantial parts of citizenry really don't know what is in Constitution and think it is good to have it the old way.

Q-What about due process laws, particularly in regard to criminal procedure?
A-Didn't have due process - not an issue in campaigns.

Q-How thoroughly did you study unicameral and what size did you end up with in Legislature?
A-Increased size by one. All proposals had three readings and each time this one was read the Legislature was a different size. Three House members and one Senate member for each district was the old way, which was adopted and increased the number by one. There was a debate on unicameral and it got to the floor but not by many votes. One interesting proposal but with not many votes was parliamentary system. If you look at experience in municipalities and Canada and consider one-man, one-vote, this system will probably come. This was proposed in official reports of the Convention-most innovative proposal of Convention.

Q-Was number of Legislature set in Convention?
A-Yes.

Q-Why was it done and not left to Legislature?
A-This has always been in our Constitution.

Q-Did you have to change boundaries and who did it?
A-Legislature first, then a reapportionment commission (8 people appointed by the legislative leadership. If they can't agree there is a provision for a tie break: the two political party chairmen's names are put in a hat and the one drawn by the Secretary of State decides.)

Q-What is the legislative salary and how is it raised?
A-$17,500 annually. We gave consideration to a Commission to set salaries. No limitation on length of Session.

Q-How many legislators were delegates?
A-Two.

Q-What pitfalls or problems would you advise we avoid?
A-We turned out all of this literature in Illinois. My first advice would be to get on top of the literature. We put the Constitutions of all states on tape. I think the tape could be made available.

Q-Could you get the Judiciary Article, for instance, from each?
A-Yes, available thru Legislative Research Bureau, Springfield, also the constitutions in looseleaf form are available from Columbia Research Drafting Service.

The Chairman thanked Dr. Gove for the excellent presentation. The meeting was temporarily adjourned at 2:55 P.M. for coffee.

The meeting was reconvened at 3:05 and the Chairman introduced Mr. C. Emerson Murry, Director of the North Dakota Legislative Council, State Capitol, Bismarck, North Dakota.

Mr. Murry gave a very informative presentation of the background of constitutional revision in the State of North Dakota leading up to the Constitutional Convention which is currently taking place beginning January 3, 1972 at Bismarck. The presentation was followed by a question and answer period.

Q-Why was the Constitution originally split in half for study?
A-North Dakota is limited to 60-day sessions, and have the pattern of research, work-study hearings developed. It is also alot cheaper to have committees working than to have the entire Commission there. The Legislative Council is used as an ongoing vehicle.

Q-Did Illinois or North Dakota have subpoena powers?
A-Murry: To my recollection they put it in, have to look at statute, not sure.
Gove: Do not remember, it was an enabling act.

Q-When you submit the Constitution to the people can it be adopted by a simple majority vote?
A-Yes.

Q-In light of the proposals various Committees submitted what was the first objective?
A-Same as Illinois, removed great mass of statutory material from the Constitution. Made every effort to strengthen the power of the Governor by reducing number of indepently elected officials. One vote margin in committee for unicameral legislature.Minority report submitted for bicameral. It sways back and forth and is anyone's guess whether it will come out of Convention - most people doubt it will survive. For: initiative and referendum permitting any law of the Legislature to be suspended by 27,000 vote margin.

Q-Does the Convention have an open assignment, to come up with a new Constitution or propose any number of changes.
A-True. Stayed away from legislative domination.
Gove: Several states are going to limited constitutional conventions. Pennsylvania is trying to do everything it can in four areas: legislative reapportionment, judiciary, local government, and revenue.

Q-Was excellent media coverage spontaneous or a real effort on the part of staff in interim or was whole business left to Convention?
A-We have a public information specialist on the staff. Our staff considers almost first call providing information to the press. All meetings are open and public.

Q-Were there benefits from having had statewide votes defeated?
A-The three statewide elections and one on the Call generated interest. If a Convention is held when the Legislature is not in session it creates press interest and press coverage generates public interest.

Q-What was voter turnout last election?
A-Smaller than most. Usually around 200,000, last 180,000.

Q-Were any major things in Constitution real urgent or is Convention more to clean it up?
A-Initiative and referendum is the most disruptive in state government. Any law once voted on by people can never again be amended without 2/3 vote regardless of purpose of amendment. Not government of majority but government of a 2/3 majority. It is difficult to get 2/3 to agree. Not conducive to a representative government. Revenue not much of a problem, can only borrow$200,000 without voter approval. North Dakota is a pay-before-you-go state.

Q-Is reduction of constitutional officers on ballot?
A-Fourteen in executive branch now, five proposed.

Q-Is a reduction in the Legislature proposed?
A-Unicameral would be 99. Presently we have 98 in the House and 49 in the Senate.

Chairman Andersen extended appreciation to Mr. Murry for the excellent presentation and thanked Mr. Murry and Dr. Gove for their willingness to appear before the Commission.

STEERING COMMITTEE REPORT

The Chairman stated the Steering Committee had reviewed the appointments to the study committees and in considering their work programs it was decided to let each committee chairman meet with his Committee to determine areas of responsibility.

He further stated it was welcome news to have research assistance from the University of Minnesota law students. He reported that the Final Report Committee will begin to look at a timetable and remind us of the need for substantive consideration and active functioning of committees.

Chairman Andersen stated he had brought the matter of the direction the Commission might pursue to the attention of the Steering Committee and presented some alternatives to the Commission as follows: Indicate deficiencies only, Indicate deficiencies and suggested alternatives; Recommend by what means referendum be accomplished. He stated these are broad policy questions to be decided in order for Committee members to know what kind of report is expected.

The Chairman stated Dave Durenberger will request a printout of the fifty Constitutions and the possibility of printouts of each individual article. He will also check into the Illinois Annotated and Comparative Analysis.

The Chairman praised the members of the Commission for their interest and excellent attendance.

Chairman Heinitz and Auerbach announced meetings of the Education and Legislative Committees immediately following.

Meeting adjourned at 4 P.M.

Elmer L. Andersen
Chairman

file

The fifth meeting of the Minnesota Constitutional Study Commission was held in Room 15, State Capitol, St. Paul, Minnesota on Thursday, February 3, 1972. The following members were present:

Honorable Elmer L. Andersen, Chairman
Professor Carl A. Auerbach
Senator Robert J. Brown
Senator Jack Davies
Rep. Aubrey W. Dirlam
Mr. Orville J. Evenson
Rep. Richard W. Fitzsimons
Rep. O. J. Heinitz
Mrs. Betty Kane
Rep. Ernest A. Lindstrom
Mrs. Diana Murphy
Hon. James C. Otis
Mr. Duane C. Scribner
Senator Robert J. Tennessen
Senator Stanley N. Thorup
Senator Kenneth Wolfe

The Chairman called the meeting to order at 2:20 P.M., a quorum being present. He introduced Professor Fred Morrison of the University of Minnesota Law School who will be Research Director for the Commission, coordinating the work of the University law students assigned to each Committee.

He then turned the chair over to Senator Robert Tennessen, Chairman of the Transportation Committee for a continuation of his Committee's morning hearing concerning Article XVI, Article XIX, and Article IV, Sec. 32 of the Minnesota Constitution.

Senator Tennessen stated representatives from various state departments had been requested to testify and the following were heard: Commissioner Lawrence McCabe, Department of Aeronautics; Commissioner Doug Kelm, Metropolitan Transit Commission; Mr. Gene Avery, Director of Program Planning for the Metropolitan Council; Assistant Commissioner Francis Marshall, Highway Department. A very informative question and answer period followed each presentation. Mr. Orvin Olson, Research Director for the Department of Economic Development was present and presented a written statement from his Department.

Senator Tennessen thanked the Commission for allowing his Committee to conduct the hearing and thanked all who took part. He then turned the meeting over to Chairman Andersen who called for reports of Committees.

REPORT OF STRUCTURE AND FORM COMMITTEE
Judge Otis referred to the Committee's printed report with respect to the first three Articles of the Constitution. Senator Davies commented on the Committee's recommendations. No action was taken.

REPORT OF FINAL REPORT COMMITTEE

Mr. Duane Scribner stressed that time restrictions are real in order for the Commission to make a report on November 15, 1972. A discussion followed and the Chairman asked that this Committee consult with the Committee Chairmen as to their anticipated needs and project from there.

Chairman Andersen called attention to the minutes of the previous Commission meeting stating if no objections they be accepted as distributed.

REPORT OF EXECUTIVE SECRETARY

Mr. Dave Durenberger advised a meeting of Committee Chairmen was held immediately prior to the Commission meeting which set out ground rules for utilization of research and public hearing process.

There being no further business Chairman Andersen extended appreciation to the Commission members and all participants and adjourned the meeting at 4:30 P.M.

Elmer L. Andersen
Chairman

The sixth meeting of the Minnesota Constitutional Study Commission was held in Room 15, State Capitol, St. Paul, Minnesota, on Thursday, March 2, 1972. The following members were present:

Honorable Elmer L. Andersen, Chairman
Professor Carl A. Auerbach
Senator Robert J. Brown
Senator Jack Davies
Rep. Aubrey W. Dirlam
Mr. Orville J. Evenson
Rep. Richard W. Fitzsimons
Rep. O. J. Heinitz
Senator Carl A. Jensen
Mrs. Betty Kane
Rep. Ernest A. Lindstrom
Mrs. Diana Murphy
Rep. Joseph Prifrel
Mr. Duane C. Scribner
Senator Robert J. Tennessen
Senator Stanley N. Thorup

The Chairman called the meeting to order at 2:10 P.M., a quorum being present. He turned the chair over to Professor Carl Auerbach, Chairman of the Legislative Branch Committee for a continuation of his Committee's morning hearing.

Professor Auerbach stated a very interesting meeting was held in the morning session concerning Article IV of the Constituion, concentrating primarily on the redistricting problems of the state. He introduced Mr. Normal L. Newhall Jr., Member of the Governor's Bipartisan Reapportionment Commission of 1966, who explained the Commission's recommendations with regard to reapportionment.

Senator Nicholas Coleman, Minority Leader of the State Senate, Senator Robert J. Brown (speaking for Senator Keith Hughes, Chairman of the Senate Reapportionment Committee), Secretary of State Arlen Erdahl each presented his views on the reapportionment problem and other legislative matters. Mrs. Joseph Brink of St. Joseph, Minnesota spoke in favor of retaining the present size of the legislature.

Professor Auerbach extended appreciation to each participant and turned the meeting over to Executive Secretary Dave Durenberger who chaired the balance of the meeting in the absence of the Chairman. Senator Brown made a motion to approve the minutes as distributed, there being no additions or corrections. Seconded and carried.

Mr. Scribner, Chairman of the Final Report Committee, presented his Committee's recommendations concerning committee hearings.

Following discussion Mrs. Kane requested time be allotted for considerations of the Amendment Process Committee at a meeting in the near future. Following discussion it was determined a meeting of the Steering Committee and the Committee Chairmen will be called and the members notified of the details.

Senator Tennessen, Chairman of the Transportation Committee, stated he will submit to the office secretary the full schedule of his Committee's hearings.

Senator Davies reported for the Structure and Form Committee, stating they will try to submit the committee report in April.

Announcements were made concerning the Commission meeting in April which will include the Bill of Rights Committee hearing, and the May Commission meeting to be held in Moorhead, Minnesota.

There being no further business the meeting adjourned at 4:45 PM.

Elmer L. Andersen,
Chairman

The seventh meeting of the Minnesota Constitutional Study Commission was held in Room 15, State Capitol, St. Paul, Minnesota on Thursday, April 6, 1972. The following members were present:

Prof. Carl Auerbach
Senator Robert J. Brown
Senator Jack Davies
Rep. Richard Fitzsimons
Senator Carl Jensen
Mrs. Betty Kane
Rep. L. J. Lee
Mrs. Diana Murphy
Judge James C. Otis
Rep. Joseph Prifrel
Hon. Karl Rolvaag
Mr. Duane Scribner
Senator Robert Tennessen
Senator Stanley Thorup

Vice Chairman Karl Rolvaag called the meeting to order at 2:05 P.M. in the absence of Chairman Andersen who was in Europe on business. Senator Jensen moved that the Commission meeting minutes of March 2nd be approved as distributed. Seconded and carried.

Dave Durenberger, Executive Secretary, reported on the recommendation of the Steering Committee. He called attention to the minutes before each member, particularly the following recommendations: 1] Committee hearings should be held by the first part of June; 2] Each Committee is to submit an individual report to the Commission with its recommendations; 3] The Commission will act on each report and submit its report; 4] Additional research requests should be made by the end of April. Mr. Duane Scribner further explained the plans of the Final Report Committee.

The Chairman called on Mr. Dave Schoeneck who presented the results of the St. Paul Chamber of Commerce's survey conducted among its membership on the subject of Constitutional Revision. The survey results have been filed with the Commission. The Chairman complimented Mr. Schoeneck and the St. Paul Chamber of Commerce for their interest and contribution.

REPORT OF COMMITTEES

Executive Branch: Senator Jensen stated he had written the constitutional officers and in view of the replies requested a hearing before the Commission to hear these officials.

Finance: Representatiave Fitzsimons stated the March 17th meeting of the Finance and Education Committees developed the fundamental issues.

Structure and Form Committee: Judge Otis stated his Committee had completed the initial work and Senator Davies was putting their recommendations into a report to the Commission.

Amendment Process: Mrs. Kane reported her Committee will hold a hearing sometime following the meeting in Moorhead.

Transportation: Senator Tennessen reported on his Committee's hearing in Duluth and stated they would be meeting in Marshall on the following day, and have additional outstate meetings scheduled.

Chairman Rolvaag requested a report on the May and June Comission meetings. Dave Durenberger outlined the itinerary for holding meetings and hearings all day May 4th in Moorhead including transportation arrangements. Representative Fitzsimons made a motion we adopt the schedule and meet in Moorhead on May 4th. Seconded by Representative Lee and carried. Discussion concerning an outstate meeting in June tended to be negative due to time restrictions. A decision will be made at the May meeting.

The Bill of Rights Committee, chaired by Mrs. Diana Murphy, conducted a hearing before the full Commission regarding rights of the institutionalized and women's rights which was a continuation of the Committee hearing commenced at 10 A.M. The following individuals testified: United States Congressman Donald Fraser; Dr. Phyllis Kahn, Womens Political Caucus; Mrs. Betty Howard, State Department of Human Rights, Miss Ellen Dresselhuis, Womens Equity Action League; Dr. Eugene Eidenberg, Equal Opportunities; Mrs. Dolores Orey, Ramsey County Legal Assistance; each speaking in favor of women's rights. Corrections Commissioner David Fogel spoke in favor of rights for those in penal institutions, and Mrs. Miriam Karlins, State Department of Welfare spoke in favor of rights for those in mental institutions.

The meeting was adjourned at 5:30 P.M. at the close of the Hearing.

David Durenberger
Executive Secretary

The Constitutional Study Commission met on June 1, 1972 in the Governor's Dining Room at the State Capitol, St. Paul, Minnesota at 12 Noon. The following members were present:

Chairman Elmer L. Andersen
Prof. Carl A. Auerbach
Sen. Jack Davies
Rep. Aubrey Dirlam
Rep. Richard Fitzsimons
Rep. O. J. Heinitz
Sen. Carl Jensen
Mrs. Betty Kane
Rep. L. J. Lee
Rep. Ernest Lindstrom
Judge James C. Otis
Rep. Joseph Prifrel
Hon. Karl Rolvaag
Mr. Duane Scribner
Mrs. Joyce Hughes Smith
Sen. Kenneth Wolfe

The minutes of the May Commission meeting were approved as distributed. Chairman Andersen called on each Committee Chairman to report on the present status of his Committee's work.

AMENDMENT PROCESS COMMITTEE: Mrs. Kane discussed the pros and cons of a constitutional convention versus the amending process. A hearing is scheduled before the Commission today after which time the Committee report will be formulated.

BILL OF RIGHTS: Representative Lee, reporting for the Chairman, stated a hearing will be held June 21 at the State Capitol to hear any topic relating to the Bill of Rights, Article I, or Elective Franchise, Article VII.

EDUCATION COMMITTEE: Representative Heinitz reported there will be a hearing in Mankato on June 5, completing hearings. The Committee report will be completed July 1.

EXECUTIVE BRANCH COMMITTEE: Senator Jensen stated his Committee will hold a hearing today at 3 PM before the Commission and will meet briefly following the Commission meeting.

FINANCE COMMITTEE: Representative Fitzsimons reported public hearings are complete. Committee members have been requested to complete a questionnaire regarding recommendations on finance provisions and turn in today. The Committee report is to be ready August 1.

INTERGOVERNMENTAL RELATIONS AND LOCAL GOVERNMENT: Senator Wolfe stated there will be one more hearing on June 13 in Rochester at the annual convention of the League of Municipalities after which the Report will be drafted.

JUDICIAL BRANCH COMMITTEE: Mrs. Smith reported her Committee will hold a hearing in Rochester during the Bar Association Convention June 21 or 22 in order to hear from lawyers and judges. The Committee will then meet to consider proposals and report by August 1.

LEGISLATIVE BRANCH COMMITTEE: Professor Auerbach stated he has been attempting to reach his Committee by mail. He will distribute to members a draft of text on proposed legislative reqpportionment commission and then meet with the Committee.

NATURAL RESOURCES COMMITTEE: Representative Dirlam announced a hearing to be held June 6, at the State Capitol for suggestions relative to an environmental bill of rights, and to give consideration to possible changes to Article VIII, Secs.3 and 4.

TRANSPORTATION COMMITTEE: Rep. Prifrel reported for the Chairman stating hearings around the state have been completed. A hearing will be held with railroads operating in Minnesota on June 15, to determine their projected plans in order to make recommendations regarding transportation.

Chairman Andersen referred to a proposed schedule for consideration of Committee Reports which was approved.

Members of the 1948 Constitutional Commission were invited to attend this luncheon meeting. Dr. Lloyd Short addressed the Commission briefly concerning the alternatives of amending the Constitution.

Following discussion of a summer schedule for Commission meetings Mrs. Betty Kane made a motion to have a meeting July 20, at 12:30 P.M. and August 17th, all day. Seconded and carried.

The Commission meeting was recessed at 1:45 P.M. to reconvene at 2 P.M. in Room 15 for hearings of the Amendment Process, Executive Branch and Judicial Branch Committees.

Elmer L. Andersen

Chairman

The Constitutional Study Commission met on July 20, 1972 in Room 118 of the State Capitol, St. Paul, Minnesota at 12:30 P.M. The following members were present:

Chairman Elmer L. Andersen
Prof. Carl A. Auerbach
Senator Robert J. Brown
Senator Jack Davies
Rep. Aubrey W. Dirlam
Mr. Orville J. Evenson
Mr. O. J. Heinitz
Senator Carl A. Jensen
Mrs. Betty Kane
Rep. Ernest Lindstrom
Mrs. Diana Murphy
Judge James C. Otis
Rep. Joseph Prifrel
Mr. Duane Scribner
Senator Robert J. Tennessen
Senator Stanley Thorup

Chairman Andersen called the meeting to order at 12:40 P.M. and reviewed the contents of the information packet furnished each member. He expressed appreciation for the effort involved in compiling and preparing the four Committee Reports due for consideration at this meeting: Amendment Process, Education, Intergovernmental Relations and Local Government, and Legislative Branch report on a reapportionment commission.

Because it was impossible to have the Reports printed far enough in advance of the Commission meeting to give everyone time to study them and get reaction from the public and interested parties, the Chairman indicated he would postpone asking for final action on the Reports until the next meeting of the Commission. It is anticipated that future Committee Reports will be distributed several days prior to consideration at a Commission meeting. This will allow time for members to study the Reports and for the Commission to receive public reaction to facilitate final adoption.

The Chairman called on Research Director Fred Morrison who presented a report entitled "The Purpose of a State Constitution". The report was designed as a preamble framework for the Final Report of the Commission. His presentation was followed by a discussion comparing the Minnesota Constitution with the criteria outlined in the report.

Mrs. Betty Kane reviewed the Report of the Amendment Process Committee. She summarized the Committee recommendations as follows:

> Constitutional revision be implemented through a series of phased amendments, the first phase to be placed on the 1974 ballot consisting of a "gateway amendment" (to ease the amending process), and a non-substantive amendment to reorganize our present Constitution and remove obsolete and unnecessary provisions.

The 1973 Legislature authorize creation of a new legislative citizen commission with primary responsibility for an in-depth study and recommendation of amendments to be considered in a second phase.

Further study and recommendations for revision continue in a phased, orderly manner.

The Commission then discussed at some length the recommendations and the rationale behind the recommendations of the Amendment Process Committee Report.

Rep. O. J. Heinitz summarized the hearings held by the Education Committee and submitted the Committee's recommendations as follows:

Retention of the present language relating to sectarian education, financing of elementary and secondary education, organization of higher education, the autonomy of the University, and organization of the State Department of Education.

Provision by the Legislature for review of budget proposals of all state instutions of higher education by the Higher Education Coordinating Commission.

The Commission then discussed at some length the recommendations and the rationale behind the recommendations of the Education Committee Report.

Professor Carl Auerbach presented the Report and recommendations of the Legislative Branch Committee as follows:

A thirteen member commissinn made up of legislative, party, and public members with six months to reapportion the Legislature following each decennial census with the supreme court assuming responsibility if eight members of the commission are unable to arrive at a plan in the six months.

Establish a constitutional maximum size of 67-135 for the legislature.

A minority report submitted by Committee Member, Senator R. J. Brown, recommended:

A panel of state district court judges be selected in a process through the majority and minority leaders of the legislature with the panel employing technical staff to do the mechanics.

The legislature be given constitutional authority to prescribe criteria to be followed by the panel.

The Commission then discussed at some length the recommendations and the rationale behind the recommendations of the Legislative Branch Committee Report.

Professor Fred Morrison presented the Report of the Intergovernmental Relations and Local Government Committee in the absence of Chairman Senator Kenneth Wolfe. The Committee recommends:

The Legislature restore the requirement of local approval on special laws which affect only a few municipalities.

Simplification and consolidation of Sections 3 and 4 of Article XI dealing with charter commissions.

Amendment of the Constitution to specifically authorize the intergovernmental cooperation provided in the Joint Powers Act.

The Commission then discussed at some length the recommendations and the rationale behind the recommendations of the Intergovernmental and Local Government Committee Report.

Following discussion on the four Committee Reports Chairman Andersen stated the individual recommendations contained in each Report will be considered separately at the August 17th, Commission Meeting and that any alternative proposals should be prepared in advance in writing.

Comments concerning the content and format of the Final Report of the Commission were expressed. Chairman Andersen interpreted the concensus to be that the Committee Reports should retain their own identity as Committee Reports and that the recommendations be lifted out and made a part of the Final Commission Report.

The Chairman announced that the Executive Secretary would set dates and times of future Commission meetings to insure maximum attendance and to provide adequate advance preparation and mailing of Committee reports.

The meeting was adjourned at 5 P.M.

Chairman

File

The Constitutional Study Commission met on August 17, 1972 in Room 118 of the State Capitol, St. Paul, Minnesota at 9:30 A.M. The following members were present:

Hon. Elmer L. Andersen, Chairman
Prof. Carl Auerbach
Sen. Robert J. Brown
Sen. Jack Davies
Rep. Aubrey Dirlam
Mr. Orville Evenson
Rep. O. J. Heinitz
Mrs. Betty Kane
Rep. L. J. Lee
Rep. Ernest Lindstrom
Mrs. Diana Murphy
Judge James C. Otis
Hon. Karl Rolvaag
Mr. Duane Scribner
Prof. Joyce Hughes
Sen. Robert J. Tennessen
Sen. Stanley Thorup
Sen. Kenneth Wolfe

Chairman Andersen called the meeting to order at 9:40 A.M. The minutes of the July Commission meeting were approved as distributed. The Chairman explained that in voting on the resolutions of the committees we vote as a Commission to approve, citing however, that as long as the Commission is holding meetings decisions can be altered. The following Committee Reports were then considered for Commission approval:

Amendment Process Committee Report: Mrs. Betty Kane explained that her committee's recommendations were summed up in fourteen resolutions and that on three resolutions she, as an individual Commission member, had alternate recommendations which she felt would open up the revision process to more direct citizen involvement.

MOTION by Mrs. Kane and seconded:

> RESOLVED, that the Commission's recommendations be implemented through "phased revision", a series of amendments submitted by the Legislature. (Report pp.8-15)

Discussion followed and Senator Thorup requested a roll call on the vote which resulted in 12 ayes and 3 nays. MOTION CARRIED.

MOTION by Mrs. Kane and seconded:

> RESOLVED, that the Commission recommend creation of a further citizen-legislature commission to consider the second and subsequent phases. (Report pp.8-15)

Discussion followed and MOTION CARRIED.

MOTION by Mrs. Kane and seconded:

> RESOLVED, that the approval of a constitutional amendment require a simple majority of those voting on the question. (Report pp.24-29)

MOTION TO AMEND by Senator Davies and seconded:

> that the approval of a constitutional amendment require either a majority of those voting at the election or 55% voting on the question.

Discussion followed and MOTION TO AMEND CARRIED. MOTION ON RESOLUTION AS AMENDED CARRIED.

MOTION by Mrs. Kane and seconded:

> RESOLVED, that the Legislature should be permitted to propose amendments by a majority vote of each house as at present. (Report pp.17-18)

Discussion followed and MOTION CARRIED..

MOTION by Senator Davies and seconded:

> RESOLVED, that there be no provision for initiative of amendments by petition. (Report pp.19-20)

MOTION TO AMEND by Mrs. Kane and seconded:

> That there should be a provision for initiated amendments to Article IV, the legislative article.

Discussion followed. MOTION TO AMEND THE AMENDMENT by Rep. Lindstrom and seconded:

> Insert a period after "amendments" and delete the remaining words.

Discussion followed. Senator Brown requested a roll call on the vote which resulted in 2 ayes, 13 nays, MOTION TO AMEND THE AMENDMENT LOST.

Mrs. Kane, and Senator Brown the seconder, accepted additional language to be added to Motion to Amend:

> change the period to a comma and add "relating to structure and procedures of the legislature."

Discussion followed, and a MOTION TO AMEND THE AMENDMENT was made by Senator Tennessen and seconded:

Strike the words "and procedures"

Discussion followed and MOTION TO AMEND THE AMENDMENT CARRIED.

Discussion followed and a vote on the amended amendment by show of hands resulted in 9 ayes, 6 nays. MOTION TO AMEND CARRIED.

It was agreed Mrs. Kane would draft a resolution to give effect to this resolution and present the draft language for action by the Commission at its next meeting.

Mrs. Kane presented the committee recommendation that there be no change in constitutional language requiring that proposed amendments be limited to one subject. She indicated she personally preferred to recommend that no proposed amendment should include more than one article or subject. The Chairman deferred action on this recommendation to the afternoon.

MOTION by Mrs. Kane and seconded:

RESOLVED, that the Legislature, by a 3/5 vote should be permitted to submit the question of calling a constitutional convention to the voters at a general election. (Report pp.31-2)

Discussion followed. MOTION TO AMEND by Senator Tennessen, and seconded:

Delete "3/5" and insert "majority"

Discussion followed. Mrs. Murphy requested a roll call vote which resulted in 7 ayes and 7 nays with Chairman Andersen breaking the tie in favor. MOTION TO AMEND CARRIED.

MOTION by Mr. Evenson and seconded:

Postpone vote on the amended motion until the afternoon.

Discussion followed. MOTION LOST.

The Chairman called for a vote on the motion as amended, a roll call requested by Senator Tennessen resulting in 8 ayes, 6 nays and 1 present not voting. MOTION ON AMENDED MOTION CARRIED.

MOTION by Mrs. Kane, and seconded:

> RESOLVED, that the same question could be submitted at a special election by 2/3 vote of each house. (Report p.31)

Discussion followed. MOTION CARRIED.

Mrs. Kane presented the following Committee recommendation:

> RESOLVED, that the question of holding a constitutional convention should be submitted to the people by the Legislature with no provision for initiative or for periodic submission of the question. (Report pp.31-32)

During the discussion she offered the following alternative:

MOTION by Mrs. Kane and seconded:

> That there be provision for popular initiative of submitting the question for a constitutional convention, but no provision for periodic submission of the question.

Discussion followed. Rep. Dirlam requested a roll call vote which resulted in 3 ayes and 11 nays. MOTION LOST

MOTION by Mrs. Kane and seconded:

> RESOLVED, that the question of holding a constitutional convention may be submitted to the people by the Legislature with no provision for initiative or for periodic submission of the question. (Report pp.31-32)

Discussion followed. MOTION CARRIED.

MOTION by Mrs. Kane and seconded:

> RESOLVED, that ratificatinn of a new constitution continue to require 3/5 of those voting on the question. (Report pp.32-33)

Discussion followed. MOTION CARRIED.

MOTION by Mrs. Kane and seconded:

> RESOLVED, that the ratification of a new constitution be submitted as designated by the convention at a special, primary, or general election two to six months after adjournment of the convention. (Report pp.32-33)

Discussion followed. MOTION CARRIED.

The Commission meeting was recessed for lunch at 12:30 P.M. with the Chairman reconvening the meeting at 1:05 P.M. continuing with the Amendment Process Committee Report.

MOTION by Mrs. Kane and seconded:

> RESOLVED, that a "Gateway Amendment," incorporating these recommendations, should be a part of the first phase of the phased amending process. (Report pp.8-15)

Discussion followed. MOTION CARRIED.

The Chairman recognized Professor Auerbach who discussed the matter of the Committee's recommendation that there be no change in constitutional language requiring proposed amendments to be limited to one subject. He indicated that, based in part on legal research accomplished for him relative to judicial interpretation of this Article, that the Commission could make recommendations for amendment of the various articles of the Constitution and of the structure and form of the Constitution without change in this language. After further discussion,

MOTION by Mrs. Kane and seconded:

> RESOLVED, that there be no change in constitutional language requiring proposed amendments to be limited to one subject. (Report pp.20-24)

Discussion followed. MOTION CARRIED.

MOTION by Mrs. Kane and seconded:

> RESOLVED, that recommendations of the Structure and Form Committee approved by the Commission also be part of the first phase. (Report pp.8-15)

Discussion followed. MOTION CARRIED.

The Chairman thanked Mrs. Kane for her fine presentation and the Amendment Process Committee for its deliberations and recommendations. He called on Senator Wolfe to report on the legislative conference in Columbus, Ohio, from which he had just returned.

Mr. Evenson requested information on reconsidering a motion voted on in the morning meeting (recommending that the Legislature by a majority vote be permitted to submit the question of calling a constitutional convention to the voters at a general election). The Chairman explained the rules of the Commission as, a person seeking that permission would have had to vote on the prevailing side to ask for reconsideration, but stated the request would be placed on record.

Education Committee Report: Rep. O. J. Heinitz explained the findings of hearings held, and the recommendations made by his Committee, and presented the following resolutions:

MOTION by Rep. Heinitz and seconded:

> RESOLVED, that there is no need for change in constitutional provisions prohibiting aid to sectarian education. (Report pp.5-16)

Discussion followed. MOTION CARRIED.

MOTION by Rep. Heinitz and seconded:

> RESOLVED, that there is no need for change in provisions relating to public school finance and state support for education. (Report pp.17-26)

Discussion followed. MOTION CARRIED.

MOTION by Rep. Heinitz and seconded:

> RESOLVED, that Article VIII, Sec.3, relating to the autonomy of the University of Minnesota be retained in its present form. (Report pp.33-37)

Discussion followed. MOTION CARRIED with Senator Brown and Rep. Lindstrom requesting to have their no votes recorded.

MOTION by Rep. Heinitz and seconded:

> RESOLVED, that there is no need for spelling out the organization of public higher education. (Report pp.27-33)

Discussion followed. MOTION CARRIED.

MOTION by Rep. Heinitz and seconded:

> RESOLVED, that the Commission recommend legislative or other appropriate action to provide for review of university and college financial requests by the Higher Education Coordinating Commission. (Report pp.29-32)

Discussion followed. MOTION CARRIED.

MOTION by Rep. Heinitz and seconded:

> RESOLVED, that the organization of the Department of Education should not be spelled out in the Constitution, but should be regulated by statute.

Discussion followed. MOTION CARRIED.

Chairman Andersen thanked Representative Heinitz for his excellent presentation and the Education Committee for its deliberations and recommendations.

Legislative Branch Committee Report (Reapportionment): Professor Carl Auerbach explained briefly his Committee's report and presented the following resolutions:

MOTION by Prof. Auerbach and seconded:

> RESOLVED, that Article IV, Sec.1, should be amended to provide explicitly that the entire Senate be elected at the first general election after a federal census and reapportionment and then for four year terms until the new census and reapportionment. (Report pp.30-34)

Following discussion, a MOTION by Senator Wolfe was made, and seconded, to lay over the resolution to the next meeting. MOTION CARRIED.

MOTION by Professor Auerbach and seconded:

> RESOLVED, that Article IV, Sec.2, be amended to limit the Senate to 67 members and the House of Representatives to 135. (Report pp.34-35)

Discussion followed. MOTION LOST. Representative Dirlam requested a division which indicated the vote on the motion to be 4 ayes and 9 nays.

MOTION by Professor Auerbach and seconded:

> RESOLVED, that the Constitution should provide standards for apportionment and districting as follows:
>
> Congressional, senatorial and representative districts should contain as nearly as practicable an equal number of persons, as determined by the most recent federal or state census. Minor deviations from the population norm determined by dividing the population of the state by the number of districts in question, shall be permitted in order to take into consideration the factors of contiguity, compactness, estraordinary natural boundaries and the maintenance of the integrity of counties, cities, incorporated towns and townships, but only if such criteria are uniformly applied.

No representative district shall be divided in the formation of a senate district.

Each congressional, senatorial and representative district shall be composed of geographically contiguous territory. Unless absolutely necessary and a choice is possible among more than one such unit, cities or towns shall be divided in preference to counties and more populous units shall be divided in preference to less populous ones. Consistent with these standards, the aggregate length of the boundary lines of each congressional, senatorial and representative district shall be as short as possible.

Discussion followed. The Commission agreed the Committee present at the next meeting changes in the resolution to reflect suggestions that came out of the discussion.

MOTION by Professor Auerbach and seconded:

RESOLVED, that full responsibility for reapportionment and redistricting be given to a commission, subject to judicial review. (Report pp.39-40)

Discussion followed. The following MOTION TO AMEND was made by Senator Thorup and seconded:

Replace the comma with a period following "commission" and delete the remaining words.

Following discussion MOTION CARRIED, after which the MOTION ON RESOLUTION AS AMENDED CARRIED.

MOTION by Professor Auerbach and seconded:

RESOLVED, that the Commission should consist of members as follows: Speaker of the House or his appointee, Minority Leader of the House or his appointee; Majority leader of the Senate or his appointee, Minority Leader of the Senate or his appointee; Two members appointed by State Central Commitee of each party whose candidates for governor received more than 20% of the vote in the most recent election, and enough additional members, appointed by unanimous consent

of the above to make a total of thirteen members, and if there is failure to appoint (or to agree on the additional members) the Supreme Court shall make the appointments. (Report pp.40-42)

Discussion followed. MOTION TO AMEND by Mr. Evenson and seconded:

Delete "and enough additional members" and insert "and one member to represent the farmers of the state, two representatives from business and labor be appointed by unanimous consent of above."

Discussion followed. MOTION TO AMEND LOST. Discussion continued on original motion.

MOTION TO AMEND made by Mr. Scribner and seconded:

The governor shall appoint two (2) members. Two (2) members shall be appointed by the state executive committee of each political party, other than that to which the Governor belongs, whose candidate for governor received twenty (20) or more percent of the votes at the most recent gubernatorial election, or by any successor authority to the state executive committee which is charged by law with the administration of the party's affairs; and that other references to the State Central Committees be similarly changed.

Discussion followed. Senator Brown requesteted a roll call vote which resulted in 13 ayes and 4 nays. MOTION CARRIED.

MOTION by Governor Rolvaag to lay Resolutions numbered 6, 7, 8 and 9 on the table. After discussion MOTION WITHDRAWN.

MOTION by Professor Auerbach and seconded:

RESOLVED, that the concurrence of eight members of the Commission should be necessary to enact a plan of apportionment. (Report p.41)

Discussion followed and MOTION CARRIED.

MOTION by Prof. Auerbach and seconded:

> RESOLVED, that federal, state and local public officials and employees not be permitted to serve on the Commission, except the legislative members and notaries public, members of the armed forces reserves and officers and employees of public educational institutions.

Discussion followed. A SUBSTITUTE MOTION was made by Mr. Scribner and seconded:

> No United States Senator, member of the United States House of Representatives and no member of the State Senate or House, other than the Speaker and Minority Leader of the House, the Majority and Minority Leaders of the Senate, and their appointees, if any, shall be eligible for membership on the Commission.

Following discussion the MOTION CARRIED.

MOTION by Professor Auerbach and seconded:

> RESOLVED, that the activities of the Commission be regulated as follows: The Commission shall hold such public hearings in the different geographic areas of the State as it may deem necessary or advisable to give individual citizens and interested groups of citizens the opportunity to submit proposed apportionment and districting plans or otherwise to testify, orally or in writing concerning their interest in apportionment and districting.

Discussion followed. MOTION LOST.

MOTION by Professor Auerbach and seconded:

> RESOLVED, that the Commission action should be subject to judicial review in the state supreme court within restricted time limits.

If the state Supreme Court, or any United States court, determines that such plan does not comply with constitutional requirements, the state Supreme Court shall modify the plan so that it complies with constitutional requirements and direct that the modified plan be adopted by the Commission.

If the Commission fails to adopt a final plan to apportion, each member of the Commission, individually or jointly with other members, may submit a proposed plan or plans to the state Supreme Court. The Supreme Court shall select the plan which it finds most closely satisfies the requirements of this Constitution and with such modifications as it may deem necessary to completely satisfy these requirements, shall direct that it be adopted by the Commission and published as provided herein. If no Commission member submits a plan by the time specified, the Supreme Court shall appoint a panel of trial judges which within four (4) months after the date for the submission of individual member plans has expired, shall itself prescribe anew the bounds of congressional districts or apportion anew the senators and representatives among the several districts and prescribe anew the bounds of such districts.

Discussion followed and MOTION CARRIED.

Chairman Andersen called attention to the outline of the final report recommended by that Committee which will be followed in structuring the final report of the Commission. He stated the staff will schedule future Commission meetings as needed. There being no further business the meeting adjourned at 4:30 P.M.

Chairman

ELA/br

MEMO FROM CONSTITUTIONAL STUDY COMMISSION, B. Rosas, Sec.

Attached is an amended "page 3" of the minutes of the Commission for the August 17, 1972 meeting. Please insert in place of the page 3 you have in your copy of these minutes. (One motion was inadvertently omitted in typing.)

A draft of the minutes of the September 20 meeting was sent to you. These minutes were adopted as in the draft. Please so indicate on your copy, as an additional set of minutes will not be sent for that meeting.

The adopted minutes of the November 21 meeting are attached.

Discussion followed, and a MOTION TO AMEND THE AMENDMENT was made by Senator Tennessen and seconded:

Strike the words "and procedures"

Discussion followed and MOTION TO AMEND THE AMENDMENT CARRIED.

Discussion followed and a vote on the amended amendment by show of hands resulted in 9 ayes, 6 nays. MOTION TO AMEND CARRIED.

It was agreed Mrs. Kane would draft a resolution to give effect to this resolution and present the draft language for action by the Commission at its next meeting.

Mrs. Kane presented the committee recommendation that there be no change in constitutional language requiring that proposed amendments be limited to one subject. She indicated she personally preferred to recommend that no proposed amendment should include more than one article or subject. The Chairman deferred action on this recommendation to the afternoon.

MOTION by Mrs. Kane, and seconded:

RESOLVED, that the Legislature should be able to submit an amendment at a special election if 2/3 of each house concur. (Report pp.29-30)

Discussion followed. MOTION CARRIED.

MOTION by Mrs. Kane and seconded:

RESOLVED, that the Legislature, by a 3/5 vote should be permitted to submit the question of calling a constitutional convention to the voters at a general election. (Report pp.31-2)

Discussion followed. MOTION TO AMEND by Senator Tennessen, and seconded:

Delete "3/5" and insert "majority"

Discussion followed. Mrs. Murphy requested a roll call vote which resulted in 7 ayes and 7 nays with Chairman Andersen breaking the tie in favor. MOTION TO AMEND CARRIED.

MOTION by Mr. Evenson and seconded:

Postpone vote on the amended motion until the afternoon.

Discussion followed. MOTION LOST.

The Chairman called for a vote on the motion as amended, a roll call requested by Senator Tennessen resulted in 8 ayes, 6 nays and 1 present not voting. MOTION ON AMENDED MOTION CARRIED.

file

The Constitutional Study Commission met on September 7th, 1972 in Room 15 of the State Capitol, St. Paul, Minnesota at 9:30 A.M. The following members were present:

Hon. Elmer L. Andersen, Chairman
Prof. Carl Auerbach
Sen. Robert J. Brown
Sen. Jack Davies
Rep. Aubrey Dirlam
Mr. Orville J. Evenson
Rep. Richard W. Fitzsimons
Rep. O. J. Heinitz
Sen. Carl A. Jensen
Mrs. Betty Kane
Rep. L. J. Lee
Rep. Ernest Lindstrom
Mrs. Diana Murphy
Judge James C. Otis
Rep. Joseph Prifrel
Hon. Karl Rolvaag
Mr. Duane Scribner
Sen. Robert J. Tennessen
Sen. Stanley N. Thorup
Sen. Kenneth Wolfe

Chairman Andersen called the meeting to order at 9:40 A.M. and requested additions or corrections to the minutes of the August 17th meeting. Senator Davies cited that the motion at the top of page 2 should have been stated as made by Mrs. Kane and the motion to amend as made by Senator Davies. The minutes were approved as corrected.

MOTION by Mr. Evenson and seconded to reconsider the following motion from the preceding Commission meeting:

> "The Legislature by a majority vote should be permitted to submit the question of calling a constitutional convention to the voters at a general election."

Discussion followed and MOTION TO RECONSIDER CARRIED.

MOTION by Mr. Evenson and seconded:

Delete "majority" and insert "3/5".

Discussion followed, MOTION CARRIED.

Chairman Andersen called on Mrs. Betty Kane for a resolution specifying the procedure for initiating constitutional amendments altering the structure of the Legislature (resolution passed by Commission at August 17 meeting.)

MOTION by Mrs. Kane and seconded:

> RESOLVED, that the Commission recommend the addition of the following section to Article XIV, specifying the procedure for initiating constitutional amendments altering the structure of the Legislature.
>
> Sec. 2. Initiated Constitutional Amendments. Alterations or amendments to the structure of the Legislature as provided in Article IV may be proposed by a petition signed by a number of electors equal to at least eight percent of the total votes cast for candidates for governor in the preceding gubernatorial election. A petition shall contain the text of the proposed amendment and the date of the general election at which the proposed amendment is to be submitted, shall have been signed by the petitioning electors not more than twenty-four months preceding that general election and shall be filed with the secretary of state at least six months before that general election. The procedure for determining the validity and sufficiency of a petition shall be provided by law. If the petition is valid and sufficient, the proposed amendment shall be submitted to the electors at that general election and shall become effective if approved by either fifty-five percent of those voting on the amendment or a majority of those voting in the election.

Discussion followed.

MOTION TO TABLE by Rep. Fitzsimons and seconded.

Discussion followed. Senator Brown requested a roll call on the vote which resulted in 9 ayes, 11 nays. MOTION TO TABLE LOST.

MOTION TO AMEND by Senator Davies and seconded:

> Delete "as provided in Article IV"

Discussion followed. MOTION TO AMEND CARRIED.

MOTION TO AMEND by Rep. Lee and seconded:

> Following "a petition signed by a number of electors" insert: "in each of eight congressional districts."

Discussion followed and MOTION TO AMEND CARRIED. MOTION ON RESOLUTION AS AMENDED CARRIED.

Intergovernmental Relations and Local Government Committee Report: Senator Wolfe explained the hearings held by his committee and the recommendations summed up in the following resolutions:

MOTION by Senator Wolfe and seconded:

> RESOLVED, that the Commission recommend that the Legislature amend Sec.645.023 to require a local approval of laws relating to one or a few units of government. (Report pp.13-14)

Discussion followed. MOTION CARRIED.

MOTION by Senator Wolfe and seconded:

> RESOLVED, that there need be no constitutional amendment relating to county home rule, since the Legislature can deal with this issue by statute. (Report pp.16-17)

Discussion followed. MOTION CARRIED.

MOTION by Senator Wolfe and seconded:

> RESOLVED, that the sections relating to home rule charters should be simplified and consolidated, eliminating the referenct to "freeholders" and eliminating appointment of charter commissions by district judges. (Report pp.17-23)

Discussion followed. MOTION CARRIED.

MOTION by Senator Wolfe and seconded:

> RESOLVED, that the Constitution should include a mandate to the Legislature to encourage and facilitate intergovernmental cooperation and a new section relating to the joint or cooperative exercise of powers. (Report pp.23-27)

Discussion followed. MOTION CARRIED.

The Chairman thanked Senator Wolfe for his excellent presentation and the Committee for its deliberations and recommendations. Chairman Andersen excused himself and Vice Chairman Rolvaag assumed the chair.

Structure and Form Committee Report: Judge Otis explained the report stating his committee relocated provisions of the Constitution, improved language where appropriate and consolidated related material into appropriate articles and sections without consequential change in legal effect. He especially thanked Senator Davies for his extensive work on the report. Objections pertaining to some sections of the report, submitted by Research Director Fred Morrison and Revisor of Statutes Joseph Bright, were brought to the attention of the Commission and Judge Otis explained the Committee's action on each. Discussion followed.

MOTION by Judge Otis and seconded:

> RESOLVED, the Commission recommend the adoption of an amendment to improve the Minnesota Constitution's clarity by removing obsolete and inconsequential provisions, by improving its organization and by correcting grammar and style of language, but without making any consequential changes in its legal effect.

Discussion followed, MOTION CARRIED.

MOTION by Judge Otis and seconded:

> RESOLVED, that the above amendment encompass the Report of the Structure and Form Committee as adopted by the Commission.

Discussion followed, MOTION CARRIED.

Chairman Rolvaag expressed appreciation to Judge Otis and the members of his committee for the thorough and extensive work encompassed in the report. The Chairman called on Professor Auerbach to complete the resolutions of the Legislative Branch Committee Report (Part I).

Professor Auerbach referred to and explained the changes as outlined in his memo of August 28, mailed to Commission members.

MOTION by Professor Auerbach and seconded, to adopt changes to the report on reapportionment as per memo attached. MOTION CARRIED.

Legislative Branch Committee Report (Part II): Professor Auerbach explained the recommendations outlined in his committee report and presented the following resolutions:

MOTION by Professor Auerbach and seconded:

> RESOLVED, that the Commission recommend adoption of Constitutional Amendment #1 appearing on the November election ballot (Flexible Session Amendment). (Report pp.5-7)

Discussion followed, MOTION CARRIED.

MOTION by Professor Auerbach and seconded:

> RESOLVED, that the Legislature create a permanent citizens commission to advise the Legislature concerning periodic adjustment of legislative compensation. (Report pp.7-9)

Discussion followed, MOTION CARRIED.

MOTION by Professor Auerbach and seconded:

> RESOLVED, that the Legislature appoint a joint standing committee of the houses, composed of legislators from both caucuses in equal numbers, to study the recommendations made by the Citizens Conference on State Legislatures in its 1971 publication, The Sometimes Governments, and to initiate steps needed to implement those recommendations made in the above publication which are deemed desirable and have not yet been adopted and to assume the continuing task of improving the Legislature's effectiveness. (Report pp.12-13)

Following discussion MOTION WITHDRAWN by Professor Auerbach.

MOTION by Professor Auerbach and seconded:

> RESOLVED, there be no constitutional change which would require "party designation" of legislators but that legislation impose such a requirement. (Report pp.13-14)

Discussion followed. MOTION TO AMEND by Rep. Lindstrom and seconded:

> Following the words "but that" delete "legislation impose such a requirement" and insert: "the Legislature study the merits of such a legislative requirement."

Discussion followed. MOTION TO AMEND LOST. A vote on the resolution was taken, MOTION CARRIED.

MOTION by Professor Auerbach and seconded:

> RESOLVED, there be no change in constitutional provisions dealing with the calling of a special session of the Legislature pending consideration by the voters and possible implementation by the Legislature of the "flexible session amendment" appearing on the November election ballot which may make such change unnecessary. (Report pp.14-15)

Discussion followed. A SUBSTITUTE MOTION was offered by Senator Wolfe and seconded:

> There be adopted a constitutional provision allowing the Legislature to call itself into special session by petition of 2/3 of members of each house.

Discussion followed. AMENDMENT TO SUBSTITUTE MOTION by Mr. Scribner, and seconded, to add the following language at end of substitute motion:

> "provided such a session be limited to a single subject."

Discussion followed. MOTION TO AMEND SUBSTITUTE MOTION LOST. SUBSTITUTE MOTION CARRIED.

MOTION by Professor Auerbach and seconded:

> RESOLVED, the Commission recommend adoption of the provision in Constitutional Amendment #3 appearing on the November election ballot which would allow the Senate to elect its own presiding officer. (Report pp.15-16)

Discussion followed. MOTION CARRIED.

MOTION by Professor Auerbach and seconded:

> RESOLVED, that Article IV, Sec.10 which requires that all revenue bills originate in the State House of Representatives be repealed. (Report pp.16)

Discussion followed, MOTION CARRIED.

MOTION by Professor Auerbach and seconded:

> RESOLVED, that the Commission recommend the Legislature amend Article IV Sec.20 to require that all bills be "reported" rather than "read" three times prior to passage. (Report p.16)

Discussion followed. MOTION TO AMEND by Judge Otis to add the following words at end of resolution:

> "and that the Commission recommend this resolution be rereferred to the Structure and Form Committee."

Vote on MOTION TO AMEND CARRIED. MOTION ON RESOLUTION AS AMENDED CARRIED.

MOTION by Professor Auerbach and seconded:

> RESOLVED, there be no change in the number of houses in the Legislature but urge further study and debate of the merits of unicameralism. (Report pp.17-24)

Discussion followed. MOTION CARRIED.

The Chairman thanked Professor Auerbach and his committee for their deliberations and recommendations in preparing their reports.

Natural Resources Committee Report: Rep. Dirlam presented the findings of hearings held by his committee and the recommendations made, and presented the following resolutions:

MOTION by Rep. Dirlam, and seconded:

> RESOLVED, the Commission recommend the adoption of the following language as a new article to the Minnesota Constitution:
>
> Sec.1. The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The law shall provide for the implementations and enforcement of this public policy.

Sec.2. Each person has a right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as may be provided by law. (Report pp.2-7)

MOTION TO DIVIDE QUESTION by Senator Tennessen. Discussion. On point of order raised by Senator Davies the Chairman declared a division of the question as a matter of right. A vote was taken on Sec. 1 of the resolution. MOTION CARRIED.

MOTION by Rep. Dirlam and seconded, regarding Sec.2 of resolution:

Following discussion Rep. Dirlam WITHDREW MOTION and made a MOTION to refer to committee for further review and a report later. Motion seconded. MOTION CARRIED.

MOTION by Rep. Dirlam and seconded:

RESOLVED, there should be no change in Article VIII, Secs.4,5,6,and 7 as they relate to the administration of trust fund lands. (Report pp.8-12)

Discussion followed. MOTION CARRIED.

MOTION by Rep. Dirlam and seconded:

RESOLVED, there should be no change in Article XVII (Forest Fire Protection) or Article XVIII (Forestation), except as may be consequent to changes in the Finance article or the report of the Structure and Form Committee. (Report pp.13-15)

Discussion followed. MOTION CARRIED.

Executive Branch Committee Report: Senator Jensen explained the concerns and deliberations of his committee and presented its recommendations. The report was presented for discussion only and the recommendations will be voted on at the next Commission meeting.

Chairman Rolvaag called on David Durenberger, Executive Secretary, concerning future meetings of the Commission, in order to complete consideration of Committee reports and approval of the Final Report.

It was announced the Commission will meet as planned on September 20th and October 5th with consideration given to completing the Commission work immediately following general election.

There being no further business the Chairman adjourned the meeting at 3:30 P.M.

ELA/br

A bill for an act

relating to statutes; setting general conditions for local approval of special laws affecting local government; amending Minnesota Statutes 1971, Section 645.023.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1971, Section 645.023, is amended to read:

645.023 [SPECIAL LAWS; ENACTMENT WITHOUT LOCAL APPROVAL; EFFECTIVE DATE.] Subdivision 1. A special law enacted pursuant to the provisions of the Constitution, Article XI, Section 2, that affects more than five local government units, shall become effective without the approval of any affected local government unit or group of such units in a single county or a number of contiguous counties, unless the special law provides otherwise.

Subd. 1a. A special law enacted pursuant to the provisions of the constitution, Article XI, Section 2, that affects five or fewer local government units shall become effective only with the approval of the affected local government units, unless the special law provides otherwise.

Subd. 2. A special law as to which local approval is not required shall become effective at 12:01 A.M. of the day next following its final enactment, unless a different date is specified in the special law.

~~Subd. 3. --Subdivisions 1 and 2 are applicable to all special laws enacted and to be enacted at the 1967 and all subsequent sessions of the legislature.~~

Sec. 2. [EFFECTIVE DATE.] Section 645.023 as amended by this act applies to all special laws enacted in 1973 and thereafter.

DRAFT file

The Constitutional Study Commission met on September 20th, 1972 in Room 15 of the State Capitol, St. Paul, Minnesota, at 9:30 A.M. The following members were present:

Professor Carl Auerbach
Senator Robert J. Brown
Senator Jack Davies
Mr. Orville Evenson
Rep. Richard Fitzsimons
Rep. O. J. Heinitz
Senator Carl Jensen
Mrs. Betty Kane
Rep. L. J. Lee
Rep. Ernest Lindstrom
Mrs. Diana Murphy
Judge James C. Otis
Rep. Joseph Prifrel
Hon. Karl F. Rolvaag
Professor Joyce Hughes
Mr. Duane Scribner
Senator Robert Tennessen
Senator Stanley N. Thorup
Senator Kenneth Wolfe

In the absence of the Chairman who was attending a funeral in Atlanta, Georgia, Secretary Mrs. Diana Murphy chaired the meeting. Motion by Senator Davies to approve the minutes as distributed, seconded and carried. Mrs. Murphy advised that the Commission will hear and vote on the reports of various committees.

Executive Branch Committee Report: Senator Jensen outlined the testimony received in hearings and some of the views of his committee and presented the following resolutions:

MOTION by Senator Jensen and seconded:

> RESOLVED, the Commission recommend the adoption of Constitutional Amendment #3 appearing on the November 7th, election ballot which would require the governor and lieutenant governor to run on a joint election ballot, allow the Legislature to define the compensation of the lieutenant governor, and remove the lieutenant governor as the presiding officer of the State Senate. (Report pp.3-8)

Discussion followed. MOTION CARRIED.

MOTION by Senator Jensen and seconded:

> RESOLVED, the Commission recommend the deletion of the elective secretary of state from the Constitution and that

the constitutional and statutory duties of the office be otherwise provided by law. (Report pp.12-15)

Discussion followed. ACTION DELAYED.

MOTION by Senator Jensen and seconded:

RESOLVED, the Commission recommend no change in the general power of the Legislature to impeach constitutional officers and judges except that the lieutenant governor be added to the list of those officers who may be impeached. (Report pp.25-29)

Discussion followed. MOTION CARRIED.

MOTION by Senator Jensen and seconded:

RESOLVED, the Commission recommend clarification of succession provisions of the State Constitution through the addition of a specific requirement that the Legislature provide by law for vacancies in the office of governor, governor-elect, lieutenant governor and lieutenant governor-elect.

Discussion followed. MOTION CARRIED.

Commission Vice Chairman Karl Rolvaag arrived and assumed the chair. Senator Jensen requested discussion and action on his previous motion concerning deletion of the elective secretary of state from the Constitution.

Following discussion Rep. Lindstrom requested a roll call vote which resulted in 11 ayes and 5 nays. MOTION CARRIED.

MOTION by Senator Jensen and seconded:

RESOLVED, that the Commission recommend the deletion of the elective treasurer from the Constitution and that the constitutional and statutory duties of the Office be otherwise provided by law. (Report pp.18-21)

Discussion followed. A roll call vote was requested by Rep. Lindstrom resulting in 7 ayes, 9 nays, MOTION LOST.

MOTION by Senator Jensen and seconded:

> RESOLVED, the Commission recommend the deletion of the elective auditor from the Constitution and that the constitutional and statutory duties of the office be otherwise provided for by law. (Report pp.15-18)

Discussion followed. A roll call vote was requested by Rep. Lindstrom resulting in 11 ayes, 5 nays, MOTION CARRIED.

MOTION by Senator Wolfe and seconded:

> RESOLVED, the Commission recommend the deletion of the elective attorney general from the Constitution and that the constitutional and statutory duties of the office be otherwise provided for by law. (Report pp.8-12)

Discussion followed. A roll call vote was requested by Rep. Lindstrom resulting in 6 ayes, 10 nays, MOTION LOST.

In view of action taken by the Commission relative to state elective officers Senator Jensen preferred not to present the Committee recommendation of deletion of the Pardon Board from the Constitution giving the governor sole power of pardon.

MOTION by Professor Auerbach and seconded:

> RESOLVED, the Commission recommend that the Constitution delegate the power to pardon to a Pardon Board composed of members appointed by the Governor and subject to confirmation by the Senate. The Legislature shall be authorized to establish the procedures governing the Board's activities.

Discussion followed. MOTION CARRIED.

MOTION by Senator Jensen and seconded:

> RESOLVED, the Commission recommend retention of the constitutional Land Exchange Commission and Board of Investment with their memberships to be provided by law. (Report p.22)

Discussion followed. MOTION CARRIED.

Chairman Rolvaag thanked Senator Jensen for his fine presentation and the Committee for its deliberations and recommendations.

Natural Resources Committee Report: In the absence of Representative Dirlam, Senator Thorup referred to Sec. 2 of the Environmental Bill of Rights referred back to committee at the preceding Commission meeting and offered the following:

> Section 2. Each person has a right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as may be provided by law. As a condition precedent to initiating legal procedures, a person must first exhaust all administrative remedies then available.

Discussion followed. MOTION LOST.

Bill of Rights Committee Report: Mrs. Diana Murphy briefly summarized the findings of her Committee following several hearings for the public and meetings of Committee members. She then submitted the following recommendations to the Commission.

MOTION by Mrs. Murphy and seconded:

> RESOLVED, the Commission recommend amendments lowering the voting age to 18, reducing residence requirement to 30 days, allowing those who will be 18 by the general election to vote in the primary, and make stylistic changes. (Report pp.4-5 and Sec.1, p.9)

Discussion followed.

MOTION TO DIVIDE QUESTION by Rep. Lindstrom and seconded.

Discussion followed. MOTION TO DIVIDE QUESTION CARRIED.

MOTION by Mrs. Murphy and seconded:

> RESOLVED, the Commission recommend amendments lowering the voting age to 18, and reducing residence requirement to 30 days. (Report p.4)

Discussion followed, MOTION CARRIED.

MOTION by Mrs. Murphy and seconded:

> RESOLVED, the Commission recommend allowing those who will be 18 by the general election to vote in the primary election. (Report p.4)

Discussion followed. MOTION LOST.

MOTION by Mrs. Murphy and seconded:

> RESOLVED, the Commission adopt stylistic changes proposed by the Bill of Rights Committee (substitute English wording for "non compos mentis") in addition to those adopted in the Structure and Form Committee Report.

Discussion followed. MOTION CARRIED.

MOTION by Mrs. Murphy and seconded:

> RESOLVED, the Commission recommend allowing the Legislature to make provision for the restoration of voting rights to felons or the mentally disables or impaired. (Report p.4)

Discussion followed. MOTION CARRIED.

MOTION by Mrs. Murphy and seconded:

> RESOLVED, the Commission recommend stylistic changes in the language relating to residence of students and military personnel. (Report p.6 and sec.2, p.9)

Discussion followed. MOTION WITHDRAWN.

MOTION by Professor Auerbach to strike Sec.2 of article proposed by Committee. Seconded. (Report p.9)

Discussion followed. MOTION CARRIED.

MOTION by Mrs. Murphy and seconded:

RESOLVED, the Commission recommend that the Legislature provide by law for the conduct of elections, replacing detailed constitutional language on this subject. (Report pp.6-7, and Sec.3, p.9)

Discussion followed. MOTION CARRIED.

MOTION by Mrs. Murphy and seconded:

RESOLVED, the Commission recommend lowering the age for holding office to 18 years. (Report pp.7-8 and Sec.7, p.9)

Discussion followed. A roll call vote was requested by Senator Jensen resulting in 9 ayes, 7 nays. MOTION CARRIED.

MOTION by Mr. Evenson and seconded to adjourn until after the November election. MOTION LOST.

MOTION by Mrs. Kane and seconded:

RESOLVED, the Commission recommend that Article VII, Sec.1 of the Constitution be amended to change "who has been a citizen of the United States for three months", to "who is a citizen of the United States."

Discussion followed. MOTION CARRIED.

MOTION by Mrs. Murphy and seconded:

RESOLVED, that a new section on Rights of the Mentally Disabled be added to the Constitution. (Report pp.14-15)

Discussion followed.

MOTION TO LAY OVER to next meeting by Rep. Lee and seconded. Discussion followed. MOTION CARRIED.

MOTION by Mrs. Murphy and seconded:

> RESOLVED, that a new section on Inviolability of the Body be added to the Constitution. (Report pp.15-16)

Discussion followed. MOTION LOST.

MOTION by Rep. Lee and seconded:

> RESOLVED, that the Commission take no further formal action deferring any other votes until after the general election, and that the Commission next convene at the call of its chairman.

Discussion followed. MOTION CARRIED.

MOTION by Senator Brown and seconded:

> Adjourn subject to announcements.

Chairman Rolvaag recognized Executive Secretary David Durenberger for the purpose of discussing the Commission's desires and plans for future meetings. After discussion MOTION TO ADJOURN CARRIED.

Meeting adjourned at 2:20 P.M.

_____

Karl Rolvaag
Vice-Chairman

KFR/br

The Constitutional Study Commission met on November 21, 1972 in Room 15 of the State Capitol, St. Paul, Minnesota. A quorum being present Chairman Elmer L. Andersen called the meeting to order at 9:05 A.M. The following members attended:

Hon. Elmer L. Andersen, Chairman
Professor Carl Auerbach
Senator Robert J. Brown
Senator Jack Davies
Rep. Aubrey Dirlam
Mr. Orville Evenson
Rep. Richard Fitzsimons
Rep. O. J. Heinitz
Senator Carl Jensen
Mrs. Betty Kane
Rep. Ernest Lindstrom
Mrs. Diana Murphy
Judge James C. Otis
Rep. Joseph Prifrel
Mr. Duane Scribner
Senator Robert Tennessen
Senator Stanley Thorup
Senator Kenneth Wolfe

The minutes of the Commission meeting of September 20, were approved as distributed. Chairman Andersen called on Mr. Duane Scribner, Chairman of the Final Report Committee, who presented information concerning the draft of a portion of the final report which had been distributed to the members.

MOTION by Mr. Scribner and seconded:

> The Commission approve the partial draft of the final report subject to such editorial suggestions as members desire.

MOTION CARRIED.

Chairman Andersen expressed appreciation in behalf of the Commission and the Final Report Committee to Mrs. Betty Kane for her extraordinary contributions on both the composition of the final report and all Commission deliberations. The following committee reports were then considered for Commission approval:

Bill of Rights Committee Report: Mrs. Diana Murphy presented the portion of her committee's report concerning the Bill of Rights section, explaining the findings of hearings held, and the recommendations made by her committee. Chairman Andersen called on Attorney General Spannaus for his comments regarding the recommendation dealing with the right to bear arms. Discussion followed. Mrs. Murphy then presented the following resolutions:

MOTION by Mrs. Murphy and seconded:

> RESOLVED, the Commission recommend the Bill of Rights contain a section on due process and equal protection of the laws, stated as follows: "No person shall be deprived of life, liberty, or property without due process of the laws. The Legislature shall have power to enforce, by appropriate legislation, the provisions of this section."

Discussion followed. MOTION TO AMEND by Mr. Evenson and seconded:

> Strike the words "have power to"

Discussion followed. MOTION TO AMEND LOST, 8-7. MOTION ON RESOLUTION CARRIED.

MOTION by Mrs. Murphy and seconded:

> RESOLVED, the Legislature be requested to implement the above section by providing legislation to protect groups which have suffered inequities and discrimination, and in particular to assure due process rights to the mentally disabled and protection for all persons regardless of race, religion, sex, national or social origin or physical or mental handicap.

Discussion followed. MOTION TO AMEND by Rep. Heinitz, and seconded.

> Delete the words "mentally disabled" and insert the words: "mentally ill or mentally retarded"; strike the words "or mental handicap" at the end of resolution and insert: "handicap or mental illness or mental retardation."

Discussion followed. MOTION TO AMEND CARRIED. MOTION TO AMEND THE AMENDMENT by Mr. Scribner, and seconded:

> Insert "economic condition" following "social origin."

Following discussion, MOTION TO AMEND THE AMENDMENT WITHDRAWN. MOTION ON RESOLUTION AS AMENDED CARRIED.

MOTION by Mrs. Murphy and seconded:

> RESOLVED, the Legislature be requested to implement this section by providing legislation designed to protect the individual's right of access to information collected and stored on him.

Discussion followed. MOTION TO AMEND by Rep. Dirlam, and seconded:

> Delete "stored on him" and insert "preserved relative to him."

Following discussion, MOTION TO AMEND CARRIED. MOTION ON RESOLUTION AS AMENDED CARRIED.

MOTION by Mrs.Murphy and seconded:

> RESOLVED, the Commission recommend the Constitution contain a specific protection of the right to bear arms.

Discussion followed. MOTION TO TABLE by Senator Jensen, and seconded. A roll call vote was requested by Senator Brown which resulted in 10 ayes, 3 nays. MOTION TO TABLE CARRIED.

MOTION by Mrs. Murphy and seconded:

> RESOLVED, that Section 12 of the present Bill of Rights be amended to permit the Legislature to regulate the form and notice of mechanics liens.

Following discussion, MOTION WITHDRAWN. SUBSTITUTE MOTION by Mr. Scribner and seconded:

> RESOLVED, that Section 12 of Article 1, Bill of Rights, be examined by a future constitutional study commission.

Discussion followed. SUBSTITUTE MOTION CARRIED.

Chairman Andersen thanked Mrs. Murphy for her excellent presentation and the Bill of Rights Committee for its deliberations and recommendations.

Finance Committee Report: Representative Richard Fitzsimons explained his committee's report, hearings and discussions, and presented the following resolutions:

MOTION by Rep. Fitzsiomons and seconded:

RESOLVED, that Article IX, Sec. 1, of the Constitution be amended to permit the State to levy taxes computed as a percentage of federal taxes or based on federal taxable income or other terms defined by federal law.

Discussion followed. MOTION CARRIED.

MOTION by Rep. Fitzsimons and seconded:

RESOLVED, the Constitution should be amended to simplify and consolidate the limitations on state borrowing, including the following items:

(a) replacing the present prohibition of 'internal improvements' with a requirement that state borrowing or expenditure be 'for a public purpose paramount to any resulting private use or benefit';

(b) authorizing the State to make an unlimited guarantee of loans made to its subdivision or agencies which are general tax obligations of the issuer and authorizing limited cash guarantees of loans made to its subdivisions or agencies which are secured only by non-tax revenues;

(c) simplifying and consolidating the provisions relating to state debt, by requiring a 2/3 vote of each house of the Legislature for all state borrowing (other than short-term certificates of indebtedness,) by eliminating the 20-year maximum on maturity of State bonds, by authorizing the Legislature to designate an officer, committee or agency to determine the amount of money to be spend on each project (within criteria and limits set by the Legislature), and by consolidating debt provisions in other articles of the Constitution into Article IX;

(d) providing a 90-day period within which a citizen might sue to set aside or prevent state borrowing or other loan of state credit which violated the public purpose doctrine, and also providing that after this 90-day period a citizen might sue to prevent future borrowing but not to set aside previous transactions.

Discussion followed. Chairman agreed to a request to divide the question.

MOTION by Rep. Fitzsimons to consider (a), which was seconded. Discussion followed. MOTION CARRIED.

MOTION by Rep. Fitzsimons to consider (b), which was seconded. Discussion followed. MOTION CARRIED.

MOTION by Rep. Fitzsimons to consider (c), which was seconded. Discussion followed. MOTION TO AMEND by Senator Brown, and seconded:

> Delete reference to 20-year limit on bonds and maintain as is in Constitution.

Discussion followed, and a vote on the motion to amend by show of hands resulted in 5 ayes and 11 nays. MOTION TO AMEND LOST.

Discussion followed. MOTION TO AMEND by Professor Auerbach, and seconded:

> Delete "2/3" (vote of each house) and insert "3/5" (This would restore present provision.)

Discussion followed and a vote on the motion to amend by show of hands resulted in 9 ayes, and 9 nays. MOTION TO AMEND LOST.

Senator Davies requested a division of the question regarding Rep. Fitzsimons motion on (c). Following discussion the chair rules to vote on the motion undivided. The vote by show of hands resulted in 9 ayes and 9 nays. MOTION by Mr. Evenson that the wording of the motion be adopted with a notation that on the matter of 2/3 vote versus 3/5 the Commission was evenly divided which was seconded. MOTION CARRIED.

Chairman Andersen called a recess to 1:30 P.M. for lunch.

The Chairman reconvened the meeting at 1:40 P.M. and called on Representative Fitzsimons to continue with recommendations of the Finance Committee.

MOTION by Rep. Fitzsimons, and seconded, to consider (d). Discussion followed. MOTION TO AMEND by Professor Auerbach, and seconded:

> Change the first line in recommendation (d) from 90 to 120 days and delete all language following the words "public purpose doctrine" and insert "and requiring suits to be brought within such 120-day period."

Discussion followed. MOTION TO AMEND CARRIED. MOTION ON RESOLUTION AS AMENDED CARRIED.

MOTION by Rep. Fitzsimons, and seconded:

> RESOLVED, that Article IV, Sec.32(b), providing the gross earnings tax on railroads in lieu of certain other taxes, should be repealed, thus allowing the Legislature to set the form and rate of taxation on railroads, as it does for other businesses in Minnesota.

Discussion followed. MOTION CARRIED.

Chairman Andersen thanked Representative Fitzsimons for his fine presentation and the committee for its deliberations and recommendations.

Structure and Form Committee: Judge Otis explained additional editing has been completed but stated the report will be submitted to the Commission by its next meeting. He called on Senator Davies who stated his work on the report would be complete shortly.

Transportation Committee Report: Senator Robert Tennessen explained his committee's report and the hearings and meetings which were held throughout the State. He stated five pages of data on the metropolitan share in highway revenues and expenditures should be added to the report as presented to the Commission. The Chairman instructed Senator Tennessen to add this material as an appendix or otherwise. The following recommendations were presented:

MOTION by Senator Tennessen, and seconded:

> RESOLVED, there be no change in Article XIX relating to aeronautics.

Discussion followed. MOTION CARRIED.

MOTION by Senator Tennessen, and seconded:

> RESOLVED, that the Structure and Form Committee of the Commission incorporate in its recommendations the deletion of the language in Article IX, Sec.5, which duplicates the authorization in Article XVI, Sec.10, to collect a gasoline tax, and it dedicates the funds raised from such tax to the construction and maintenance of highways.

Discussion followed. MOTION CARRIED.

MOTION by Senator Tennessen, and seconded:

> RESOLVED, there should be no change in that part of Article XVI which dedicates motor vehicle and gasoline taxes to the construction and maintenance of highways.

Discussion followed. SUBSTITUTE MOTION by Senator Tennessen and seconded:

> RESOLVED, that all of Article XVI be repealed except Section 1 thereof and except the following language in Section 12 thereof: "The Legislature may provide by law for the issue and sale of bonds of the State in such amount as may be necessary to carry out the provisions of this article."

Discussion followed. A roll call vote was requested by Mr. Evenson which resulted in 10 ayes, 6 nays. SUBSTITUTE MOTION CARRIED.

MOTION by Senator Tennessen and seconded:

> RESOLVED, if the Legislature does not act favorably on preceding recommendation, that Article XVI should be amended to repeal mileage, interest, and bonding restrictions currently imposed on the Legislature.

Discussion followed. MOTION CARRIED.

MOTION by Senator Tennessen and seconded:

> RESOLVED, that the Commission recommend legislative or other appropriate comprehensive study be undertaken to determine the need for revision of the State-Aid distribution formula currently provided in Article XVI.

Discussion followed. MOTION CARRIED.

MOTION by Senator Tennessen and seconded:

> RESOLVED, the Commission recommend the repeal of Article IX, Sec.15, which restricts the bonding authority of municipalities to aid in the construction of railroads to 5% of the value of taxable property within the municipality.

Discussion followed. MOTION CARRIED.

Chairman Andersen expressed appreciation for the dedication of the Transportation Committee in holding hearings and preparing its report and recommendations.

A Steering Committee meeting will be held November 30, to consider the priority rating of Commission recommendations together with completing the plans necessary to fulfill the Commission charge. Chairman Andersen announced the final meeting of the Commission will be held on December 6, at 9 A.M. in Room 15 of the State Capitol to consider the Judicial Branch Committee Report and approve the Final Report.

Meeting adjourned at 4:20 P.M.

Elmer L. Andersen

Chairman

ELA/br

The Constitutional Study Commission met on December 6, 1972 in Room 15 of the State Capitol, St. Paul, Minnesota at 9 A.M. The following members were present:

Hon. Elmer L. Andersen, Chairman
Professor Carl Auerbach
Senator Robert J. Brown
Senator Jack Davies
Rep. Richard Fitzsimons
Rep. O. J. Heinitz
Senator Carl Jensen
Mrs. Betty Kane
Rep. Ernest Lindstrom
Judge James C. Otis
Rep. Joseph Prifrel
Hon. Karl Rolvaag
Mr. Duane Scribner
Professor Joyce Hughes
Senator Robert J. Tennessen
Senator Stanley Thorup
Senator Kenneth Wolfe

Chairman Andersen called the meeting to order at 9:35 A.M., a quorum being present. The minutes of the last Commission meeting were approved as distributed.

The Chairman called on Professor Joyce Hughes, Chairman of the Judicial Branch Committee. She explained the committee's report and recommendations.

Several recommendations of the committee became part of the Constitution with passage of the judicial amendment in November of 1972, Probate Courts are no longer constitutional offices, more than one judge of the District Court may serve temporarily on the Supreme Court at the same time, the Legislature may provide for the retirement, removal, and discipline of all judges and the Legislature may create courts inferior to the Supreme Court.

MOTION by Professor Hughes and seconded:

> RESOLVED, the Commission recommend that all judges be constitutionally required to be admitted and licensed to practice law in this State."

Discussion followed. MOTION CARRIED.

MOTION by Professor Hughes and seconded:

> RESOLVED, the Commission recommend all judges be constitutionally required to "devote full time" to "judicial duties."

Discussion followed. MOTION WITHDRAWN.

MOTION by Professor Hughes and seconded:

RESOLVED, the Commission recommend the establishment of a unified court system for Minnesota.

Discussion followed. MOTION WITHDRAWN.

MOTION by Professor Hughes and seconded:

RESOLVED, the Commission recommend the abolishment of all trial courts other than the district court.

Discussion followed. A roll call vote was requested by Senator Jensen which resulted in 7 ayes, 7 nays, 2 present not voting. MOTION LOST on a tie vote.

MOTION by Mr. Scribner and seconded:

RESOLVED, the Commission recommend that Sec.1 of Article VI as adopted in November 1972 be amended to read: "The judicial power of the state is hereby vested in a supreme court, a district court, and such other courts, judicial officers and commissioners with jurisdiction inferior to the supreme court as the legislature may establish."

Discussion followed. MOTION CARRIED.

MOTION by Professor Hughes and seconded:

RESOLVED, the legislature shall, by law, establish one or more judicial nominating commissions for the nomination of justices of the supreme court, judges of the court of appeals, and judges of the district court. Each judge shall be appointed initially by the governor from a list of not less than three nominees submitted by the appropriate judicial nominating commission.

Discussion followed. MOTION LOST.

MOTION by Senator Davies and seconded:

RESOLVED, the Commission recommend that the expiration of the term of office of an incumbent judge who has not filed for reelection create not an election situation but a vacancy which would be filled by gubernatorial appointment.

Discussion followed. MOTION CARRIED.

MOTION by Senator Thorup and seconded:

> RESOLVED, each judge shall stand for retention in office at the next general election occurring more than four years after such appointment and every six years thereafter on a ballot which shall submit the question of whether he should be retained in office.

Discussion followed. A roll call vote was requested which resulted in 11 ayes, 5 nays. MOTION CARRIED.

Chairman Andersen recessed the meeting at 12:30 P.M. for lunch.

Chairman Andersen reconvened the meeting at 1:50 P.M. with Senator Thorup presenting the recommendations of the Judicial Branch Committee in the absence of Professor Hughes.

MOTION by Senator Thorup, and seconded:

> RESOLVED, the Commission recommend the constitutional designation of the chief justice of the state supreme court as the "executive head of the judicial system." (*)

Discussion followed. MOTION CARRIED.

MOTION by Senator Thorup, and seconded:

> RESOLVED, the supreme court shall adopt rules governing the administration, admissibility of evidence, practice and procedure in all courts. These rules may be changed by the legislature by a two-thirds vote of the members elected to each house.

Discussion followed. MOTION CARRIED.

MOTION by Senator Thorup and seconded, to amend motion above (*) by adding the following:

> "and shall appoint an administrative director of courts and such assistants as the administrator deems necessary."

Discussion followed, MOTION CARRIED.

MOTION by Senator Thorup and seconded:

> RESOLVED, the supreme court shall appoint a chief judge from among the members of the district court of each judicial district.

Discussion followed. MOTION CARRIED.

MOTION by Senator Thorup and seconded:

> RESOLVED, that the present statutory authority of the chief justice to assign judges of the district court from one district to another be made constitutional.

Discussion followed. MOTION WITHDRAWN.

MOTION by Senator Thorup and seconded:

> RESOLVED, the Commission recommend the supreme court be given constitutional authority to adopt rules of conduct for all judges.

Discussion followed. MOTION CARRIED.

Chairman Andersen expressed appreciation to the members of the Judicial Branch Committee for its deliberations and recommendations.

Final Report Committee: Mr. Duane Scribner explained additional portions of the final report before the members. He requested Chairman Andersen to present the recommendations of the Steering Committee regarding the priorities the Commission recommend to the 1973 Legislature which are as follows: 1) structure and form, 2) gateway amendment, 3) reappportionment commission, 4) piggyback income tax. Senator Davies requested that the railroads gross earnings elimination be added as number three.

MOTION by Mr. Scribner to establish five priorities with the railroads gross earnings as number five. Seconded, MOTION CARRIED.

MOTION by Mr. Scribner the portion of the final report before the members be adopted subject to editorial suggestions by individual members. Seconded, MOTION CARRIED.

Senator Jensen requested that the Commission members voting against the undedication of highway funds who so desire, have their names listed as opposed in the final report. The request was granted.

Chairman Andersen suggested there be a dinner meeting held for the Commission members with the legislative leaders and the governor

to present the Commission recommendations and discuss methods of implementation.

Mrs. Betty Kane stated one recommendation concerning the amendment process had been overlooked in voting and made the following MOTION, which was seconded:

> "A constitutional convention should be approved by a majority of the electorate or 55% of those voting on the proposal."

Discussion followed, MOTION CARRIED.

Announcement was made that the Legislative Reference Library will retain all the materials relating to constitutions, and our Commission, in Room 55 of the Capitol, for use during the legislative session. Chairman Andersen stated our materials will be turned over to the Library for determination as to final disposition.

The Chairman expressed appreciation to all members and staff for their interest and dedication in completing the Commission's study and report.

Meeting was adjourned at 3:30 P.M.

Elmer Andersen

Chairman

ELA/br

AMENDMENT PROCESS COMMITTEE
Hearing Room 15 State Capitol June 1, 1972 3 P.M.

Chairman, Mrs. Betty Kane, presided over her Committee's hearing before the full Commission.

G. Theodore Mitau, Chancellor, Minnesota State College System, explained two methods of constitutional revision now provided through the Constitution: Constitutional convention and the Amendment Process. He listed as drawbacks to the convention time and expense, fear of the unknown, and the opponents of change. He stated that although revision via amendment has been relatively successful (79% between 1960 and 1970) the weaknesses are, often inconsequential change, and length of time needed since usually only one to four amendments are placed on the ballot every two years. He proposed a third alternative, phased revision. If approved by the Legislature the first of a series of comprehensive amendments could be before the voters at the 1974 general election.

Jack Morris, Former State Representative, urged a change from requiring approval by a majority of all the electors to 55% of those voting on the question. He presented the Commission with statistics concerning the amendments appearing on the ballot between 1920 and 1970.

Mrs. Mary Ann McCoy, League of Women Voters, stated the League recommends the simple majority vote by the legislature on amendments be retained but recommends a change to a majority of those voting on the question in the election. As a result of considerable involvement with voting activities the League is aware of at least three major faults in the amending process: 1) undue weight to the non-participating voter, 2) undue discomfort to informing citizens about the "no" or "yes" choice, 3) the present system allows those who don't vote to decide the issue.

Matthew Stark, Minnesota Civil Liberties Union, stated that in addition to the two present methods of constitutional revision the Union suggests a provision be made for amendment by petition and referendum. He stated he would submit a figure later as to the number of signatures to be required on petitions for amendment, that the language suggested by means of a referendum should not be subject to review as to form by any other body, and that he does not see any civil liberties issue in requiring extraordinary majorities to amend the Constitution.

Frank Sarauf, Political Science Department, University of Minnesota, stated he feels a new document as a means of constitutional revision is the least promising avenue. He recommended a series of phases, related but not completely inter-dependent sections presented over a number of years, or larger amendment packages which attempt to rewrite the most outdated sections of the existing Constitution.

A statement was received from Arlen Erdahl, Secretary of State who was unable to appear, in which he stated he recommends that Article XIV, Sec. 1 be amended to provide that a majority of those voting for any specific amendment would pass such amendment.

The hearing was adjourned at 3 P.M.

MINNESOTA CONSTITUTIONAL STUDY COMMISSION
G-19E Administration Building / St. Paul, Minnesota 55155
(612) 296-6683

The contents of this Report are preliminary only, not the final recommendation of the Commission. Therefore do not make any use of the Report without permission.

REPORT OF THE

AMENDMENT PROCESS COMMITTEE

TO THE

CONSTITUTIONAL STUDY COMMISSION

ON

JULY 20, 1972

* * * *

MRS. BETTY KANE, CHAIRMAN
SENATOR CARL A. JENSEN
REPRESENTATIVE ERNEST A. LINDSTROM

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REPORT OF THE AMENDMENT PROCESS COMMITTEE

I. Introduction

This report is submitted by Betty Kane, Chairman, Senator Carl A. Jensen, and Representative Ernest Lindstrom and was prepared with research aid from Mike Glennon of the University of Minnesota Law School.

The Amendment Process Committee has had two formal meetings, one in April with our research assistant and one in late June, at which time we decided upon the recommendations we now make to the entire Commission.

Two public hearings were held by the Committee, the first in May in Moorhead and the second in June at the State Capitol in St. Paul. The names of individuals and organizations testifying will be found at the end of this report. The substance of their recommendations will be referred to at pertinent points in this paper.

The Amendment Process Committee was given a double task. Our first assignment was to decide whether constitutional change would be better effected through a constitutional convention or by seperate amendments to our present document. Our recommendation in this area must be regarded as provisional, since final decision depends on the amount and immediacy of needed change yet to be recommended by other committees of this Commission. The findings herein presented are based on a preliminary expression of opinion at the June Commission meeting, on the history of constitutional change in Minnesota, on the testimony of experts,

and on the recent experience of other states which have undertaken major overhaul of their constitutional machinery.

The second assignment of this subcommittee was to recommend such changes in Article XIV as would facilitate constitutional revision by either amendment or convention.

In summary, our recommendations are as follows: The Minnesota Constitution should be changed by a comprehensive, phased plan of thorough revision to be submitted to the voters within the next few years. The first priority should be a Gateway Amendment to ease the extremely difficult amending process of Article XIV. Together with the changes recommended by the Form and Structure Committee, Minnesota would then possess the proper machinery with which to effect significant change of an organized nature.

II. RECENT CONSTITUTIONAL CHANGE IN THE 50 STATES

In the last twenty years the United States could be described as a huge experimental laboratory in state constitution-making. Whether by constitutional convention or by amendment, almost every state has been engaged in major constitutional overhaul.

In almost every instance the basic research for legislative decision, for convention action, or for citizen acceptance has been done by a constitutional study commission. The Minnesota Constitutional Commission of 1948 showed other states how basic a tool for constitutional reform such a group of interested citizens and legislators could provide. Now, almost a quarter of a century later, the present Commission has the benefit of

valuable spade work done in our sister states with this same tool.

Need for Reform

No constitution is better than the arrangement which it makes for its own improvement. Even a document which, like our federal constitution, is so basic and flexible as to be "self-revising" by statutory change and legal interpretation, must make provision for meeting extraordinary and unforeseen needs.

State constitutions in the past have been anything but "self-revising". There is sound reason, of course, for their need of more extensive and more continual change. Since states possess all those powers unassigned to the federal government, they must put limits on these broad residual powers. Framers of almost all state constitutions went much further than they needed in this restricting function--hampering future generations with such rigid, outdated provisions that our state charters well deserve the description of "horse-and-buggy" vehicles unable to keep pace with the times. It is small wonder that citizens have looked beyond unresponsive state capitols to Washington for help in solving their social and economic problems.

In the early 1950's President Eisenhower's Commission on Intergovernmental Affairs found that to redress the imbalance in state-federal relations, there was "a real and pressing need" for states to improve their constitutions "to be sure they provide for vigorous and responsible government, not forbid it."

States went speedily to work, using constitutional conventions (so common they became known as "con-con's"), speeded-up amendment projects, constitutional commissions, and Gateway Amendments. Sometime in the two decades between 1950 and 1970, 45 of 50 states took official steps toward modernizing their constitutions. This has been an accelerating process. In the five years between 1966 and 1970 alone, 35 states took action toward general constitutional revision, in addition to the usual piecemeal amending process. Of the remaining 15 states, ten had either held constitutional conventions or established constitutional commissions since 1950.

Thus, during these two decades, Minnesota was one of only five states not "officially" engaged in constitutional modernization. A look at our constitutional history provides an explanation.

III. CONSTITUTIONAL CHANGE IN MINNESOTA

Minnesota is one of only twenty states to operate with its original constitution and one of only eight which has never held a constitutional convention.

There have, however, been joint citizen-legislative efforts toward this goal of complete revision, there has been near-success, and out of its ultimate failure has come an improved document.

The present Constitutional Study Commission clearly regards itself, not as a pioneer, but as another milepost toward basic constitutional reform.

Early Efforts at a Convention.

Only fourteen years after acceptance of the compromise document which finally issued from the strife-torn convention(s) of 1857, Governor Horace Austin called for a convention to rewrite "this child of many fathers...this motley collection of inconsistencies".... this document "not adapted to the changed conditions of the people."

The legislature agreed with the Governor's view of needed change. By 1894 it had submitted more than 60 amendments to the people. By 1896 legislators seemed to say: Enough of piecemeal amendments. They asked the people for approval of a constitutional convention call. More voters said "yes" than "no". But non-voters were counted as "no" voters and the constitutional convention call was defeated.

A Revised Amending Process.

Having been stymied in one attempt to hold down amendment changes to the 1857 document, the legislators now went to the other extreme of remedy. In the session following defeat of the convention call, the legislature made the amendment process less accessible--almost prohibitively so. To pass hereafter, an amendment would need not only the "yes" votes of all those marking their ballots, but the "yes" votes of all those going to the polls, in that election.

The effect was dramatic. From 1858 to 1898 the voters had accepted almost three-fourths of the submitted changes (72.9%). In the next half century, the acceptance rate dropped to less than one-third (32.5%).

A Convention is Recommended.

In 1947, in proper commemoration of the 90th birthday of our state's constitution, the legislature created the Minnesota Constitutional Commission (MCC), composed of eight senators, eight representatives, a member of the Supreme Court, a member of the administrative branch, and three citizens. Their charge was to study the constitution in "relation to political, economic and social changes which have occurred and which may occur" and to recommend to the next legislature "amendments, if any" necessary to "meet present and probable governmental requirements."

The 1948 Report considerably exceeded the rather modest expectations of the legislative mandate to recommend amendments, "if any," necessary to meet changing times. It found that major changes were needed in 34 sections, minor changes in another 78, and that six new sections should be added.

In view of these extensive changes, the MCC recommended, unanimously, that changes be made by a constitutional convention.

For several sessions, submitting the question of calling a constitutional convention to the voters was a hard-fought issue. The chief factors in failure were the difficult requirement of a two-thirds vote of each house of the legislature; the fact that two of the senators to sign the MCC Report did an about-face and became adamant foes of the convention idea; and fear among rural legislators that the convention would do something about reapportionment, thus endangering their tight legislative control.

The Senate Judiciary Committee was the focus of opposition. In 1949 the House came within eight votes of the necessary two-thirds;

and in 1957 passed the convention call bill by more than two-thirds. In 1955 the House was, according to League of Women Voters observers, all set for final passage of the bill when the Senate committee met and killed the bill. In 1957, the same committee tabled the bill by a nine to nine vote making House passage academic.

To make the convention idea more palatable to the legislature, citizen groups worked for a so-called "safeguard" amendment that would allow legislators to sit as delegates and require a 60% majority for adoption of a new document. The overwhelmingly vote by which this amendment passed in 1954 (almost three to one) was interpreted as a mandate to the legislature by friends of the convention idea; to legislative foes of the idea it was at least a warning that citizens were not satisfied with their present constitution.

An Era of Amending Success.

Pressured for constitutional reform, both from within and from without, legislative leaders began to put into effect many of the recommendations of the MCC, framing amendments that were significant and far-reaching, some of them reshaping entire articles or major portions thereof. By 1959 Professor G. Theodore Mitau, in a "ten-year's perspective" view of the effect of the MCC (Minnesota Law Review 44:461) found a substantially improved document. He pointed out the "profound debt of gratitude for its professional and scholarly approach and for its lively concern for the possible and the practical. Entire sentences in subsequent amendments can be traced back to the language of the

MCC report; the amendments themselves often serve as substantive implementation of the Commission's prescription."

Aroused citizen interest resulted in the passage of half of these amendments--a marked improvement over the one-third adoption rate which prevailed from 1898 to 1946. Persons and groups which had favored the idea of improvement by convention fell to with a will to achieve improvement by amendment. The League of Women Voters, the political parties, bi-partisan committees devoted money, time and public relations skill in the battle to overcome the obstacle of Minnesota's amending majority.

The record of improved amendments--both as to content and to passage--continued through the 1960's. Of twelve amendments submitted to the voters in that decade, nine were accepted (75%); failing were the "best-man" amendment (twice) and a reapportionment amendment which would have been unconstitutional after the Baker v. Carr decision of 1962.

Across the nation, amendments were being proposed and accepted with an increasing tempo all during the 60's. Most states have outstripped Minnesota in their drive toward constitutional improvement. In the biennium January 1968 to January 1970, 450 amendments were proposed in the 50 states (an average of nine per biennium). Of these 340, about 76%, passed. This record exceeds Minnesota'a acceptance rate--for reasons we will now begin to examine.

IV. REVISION BY AMENDMENT OR A CONVENTION?

The foregoing history of constitutional change in Minnesota offers no compelling argument as to whether future change should

be continued by a series of amendments or be attempted all at once in a citizen convention.

On one hand, Minnesota's Constitution has been enormously improved by amendments of recent decades. On the other hand, large numbers of controversial matters remained unresolved twenty years after the legislature began a concentrated effort at reform via amendment.

One argument which inclined members of this committee toward a convention is this great backlog of needs and the time demanded for resolution.

Another argument for a completely rewritten document is that it will, in all likelihood be briefer, more flexible, freer of statutory detail, better written--in a phrase, more organic--than the result of patchwork, skilled though it be.

The most compelling argument for a citizen convention to produce a new document is citizen education in the processes of government. A con-con is a dramatic and action-filled event. The news media give wide and interest-filled coverage to matters usually discussed in the comparative isolation of a legislative committee room. A con-con interests, it informs, it involves. It opens up decision-making at a time when citizens are feeling removed from, even alienated by, government. It is the healthiest possible exercise for citizen development.

That is why delegates and other citizens of states where new constitutions have been defeated say: We would do it all over again.

Arguments which finally decided the Amendment Process Committee not to recommend a constitutional convention are as follows:

1. The preliminary vote of Commission members at the June meeting indicated no strong sentiment for a constitutional convention. Members of various study committees seemed to feel that the changes they are likely to recommend are attainable by the amendment process. (This reliance on amendments may, of course, be shaken when the full scope of suggested changes becomes apparent to the Commission.)

2. Public testimony likewise revealed no sentiment for a constitutional convention. At the present time, unlike the early 50's, no influential citizens, "good government" groups, or newspaper editors are pushing for a con-con. To be successful, a convention effort requires the kind of citizen involvement and concentration that is not now discernible.

3. Great constitutional difficulties lie in the way of a convention-in-legislature submission of the convention call to the voters, in voter approval of the call, and in voter ratification of the proposed constitution. Experience shows that obtaining a two-thirds vote in both legislative bodies is almost prohibitive in view of the special interests which have a stake in the present constitution (including, perhaps, legislators themselves). Special interests have been responsible for defeat of new constitutions in several states where the ratifying majority is only 50%, not our difficult 60%.

4. Recent experience of other states with con-cons is not encouraging. The following tabulation shows results in the ten states which have attempted to adopt new or substantially new documents between 1966 and the present:

Constitutions Approved	Constitutions Rejected
Hawaii	Arkansas
Illinois	Maryland
Pennsylvania	New Mexico
Montana	New York
	North Dakota
	Rhode Island

Only in New Mexico was the proposed constitution defeated by a narrow margin. The other defeats could only be described as"overwhelming".

It is important to note that five of the six defeated documents were submitted as a single package. Only in North Dakota were there opportunities to choose alternatives (unicameral vs. bicameral legislature; initiative; age of adulthood; lotteries).

The success stories followed a pick-and-choose script. Hawaii submitted the new document in 23 seperate packages. Illinois seperated out four controversial proposals for a seperate vote. Pennsylvania, which held a convention only after voters had accepted major revisions by amendment, divided the convention decisions into eight seperate proposals for voter choice.

Thus we conclude that the result of constitutional conventions is much more favorable than suggested by a mere listing of acceptance and rejection.

5. A recent variation on constitutional change by seperate amendments seemed to the Amendment Process Committee to offer many of the advantages of both a revising convention and singly submitted amendments.

This new method is orderly. It offers the possibility of thorough-going revision within a reasonable time limit. It engages citizen interest more than piecemeal amendments since it offers a perspective view of a "new" governmental framework.

It allows more leisurely and thoughtful legislative attention. It keeps opposition to controversial matters from defeating an entire document.

This new method is commonly described as "phased, comprehensive" constitutional revision. Here is how it has worked, or is working, in other states:

A constitutional study commission is universally used to make recommendations to the legislature. In California, the legislature submitted Phase I of a pre-planned revision in 1966. This revised the general governmental structure--legislative, executive, judicial--and passed. Phase II was presented in 1968; included in a single package were articles on education, local government, land use and homestead exemption, the civil service, and amendment and revision procedures. Voters evidently thought this a bit much for a single vote of acceptance as the package was narrowly defeated. The same matters were resubmitted in four amendments in the primary election of June, 1970 and were partially accepted. The Constitutional Study Commission has now completed its work on Phase III and the legislature is to present these matters at the general election of 1972.

The South Carolina Study Commission has now finished work on its outdated constitution and recommended article by article substitution of 17 articles over several years. In preparation for this procedure, the legislature submitted a Gateway Amendment, approved by the voters, allowing a single vote on a whole article and transfer of germane material from one article to another.

In Washington, a study commission has recently recommended eight revised articles, to be submitted in a planned order over the next few elections.

In Indiana in 1970 voters approved three amendments endorsed by a study commission as the first of a series.

In Nebraska which has substantially revised its constitution in the last three general elections a study commission recommended in 1970 a "unified" treatment of remaining changes.

In North Carolina, a study commission recommended extensive editorial changes and ten amendments. The editorial revision and four of the amendments were passed in 1970; the rest are scheduled for upcoming elections.

Professor Mitau (Contemporary Approaches to State Constitutional Revision, p.53) cites the major reforms that were achieved between 1966 and 1968 via the comprehensive, staged procedure: California and Massachusetts in 1966; Wisconsin in 1967; Florida, Iowa, and Pennsylvania in 1968. The only failure was in Idaho in 1966.

Another new method of speedier reform is submission by the legislature of a new document. In Florida, the voters empowered the legislature to act as a revising convention; three amendments, constituting a complete rewrite, were passed by the voters in 1968. In Delaware, where citizens have never had the power to vote on amendments, the legislature gave the first of two necessary approvals to a commission-drafted document in 1970 (the second approval was declared unconstitutional because of a technicality). In 1970, Virginia voters approved a new document, prepared by a study commission, then revised and submitted by the legislature. Oregon voters, on the other hand, rejected in the 1970 election a new constitution on which a study commission had been working for almost ten years and the legislature refining for almost seven.

This method of revision by the legislature merits discussion by this Commission, but seemed to our Committee less suited to execution by a part-time legislature, less in the tradition of independence displayed by the Minnesota voter than a series of amendments; it would necessitate, of course, a constitutional amendment.

A plan of comprehensive, phased amendments is not to be lightly recommended by this Commission nor to be taken as the end of its task. Professor Mitau points out that success requires thorough background studies, broad organizational backing, including both political parties and a range of economic interests; special staff devoted to enlisting support for the amendments; as well as extensive publicity efforts, including endorsement by the media and prominent citizens, fact sheets, publicity releases, and all the panoply of campaign devices, such as stickers and billboards, that we associate with election of candidates.

In spite of the major educational effort required, and in view of the possibility of complete, fairly rapid constitutional improvement, the Amendment Process Committee recommends that the Minnesota Constitutional Study Commission recommend to the 1973 legislature comprehensive constitutional revision through phased amendments. As the first phase of revision we recommend that a new constitutional framework be created through adoption of a "gateway amendment" and a non-substantive amendment which would more logically organize our present constitution and remove obsolete and unnecessary provisions. This first phase would be considered by the 1973 session of the legislature and voted on by the people

at the 1974 general election.

We further recommend that the 1973 Legislature authorize the creation of an adequately staffed and finance legislative-citizen commission which would have as its primary responsibility the in-depth study and recommendation of amendments to be considered in a second phase. This second phase of the revision would be considered in the 1975 legislative session and at a referendum on the 1976 general election ballot.

In subsequent revision of the constitution we recommend that the legislature and the voters have the benefit of background study and recommendations of a similar constitutional study commission and that the revision continue on a phased, orderly manner.

V. A GATEWAY AMENDMENT FOR MINNESOTA

Many states, facing up to the need for thorough-going revision of old constitutions, have encountered their first opposition in the revising sections of these very documents. As the first step to reform, they have had to amend the revising article.

Illinois was the first to do so, in 1950. Between 1870, the year in which the last of its three constitutions was adopted, and 1946, Illinois tried on five occasions to ease its extraordinarily difficult amending process. All efforts failed, owing to the high ratification majority which was one of its targets. In 1950, legislators and interested citizens joined in an all-out effort to pass what came to be known as The Gateway Amendment, since it would open up pathways to badly needed change.

Voters passed the amendment, three to one.

Since then, state after state has opened the way to constitutional reform by the kind of Gateway Amendment needed to solve its particular problems. These amendments have usually done one or more of the following: (1) eased the legislative procedure for putting an amendment on the ballot, either by lowering the majority from 2/3 to 1/2 or by making passage in one session sufficient; (2) allowed revision of an entire article; (3) permitted submission of more than one article at an election; (4) lowered the majority needed to ratify an amendment or a new constitution; or (5) permitted the legislature to act as a con-con.

The Amendment Process Committee is convinced that Article XIV of the Minnesota Constitution will make it extremely difficult, if not almost impossible, to effectuate the number of changes this Commission will recommend to the 1973 legislature.

The members of this Committee agree with W. Brooke Graves, who in his definitive State Constitutional Revision says:

> "If a state constitution is to serve its proper purposes, the door must be open to change by reasonable procedures. Where the amending process is too difficult, such as the requirement of an extraordinary popular vote, the document tends to get out of date. . . Ideally, the amending process should be more difficult than the ordinary legislative process, but not impossibly difficult." (emphasis ours)

The members of this Committee feel that Minnesota's amending process is not a "reasonable procedure", indeed, that it is almost "impossibly difficult". As the Appendix to this report will show,

if our state had originally operated under the present amending difficulty, change after change which has facilitated the operation of state and local government would have gone down to defeat.

We therefore believe that Minnesota should join the many states which have recently opened their constitutional doors to thorough-going reform by passing, at the 1974 election, our own version of a Gateway Amendment, the notable feature of which will be to reduce the "requirement of an extraordinary popular vote".

The many changes to be recommended by the various committees of this Commission will be uniformly facilitated by concentrating on the passage of such a Gateway Amendment in 1974.

We present below the various questions to be answered in changing the provisions of Argicle XIV, in the order in which we considered them, and with the pertinent arguments and data which helped us to our decisions, in order that the Commission may have full opportunity to question, modify, reject, or accept our recommendations. Where the three members of this Committee have had different opinions, we have so indicated.

VI. RECOMMENDED CHANGES IN ARTICLE XIV, Section 1 (AMENDMENTS)

A. Submission by Legislature to Voters

Comment: This is the one step of constitutional revision at which Minnesota is more permissive than most states. One authority points out that an extraordinary majority provision limits amendments to those with greatest support but that it also weakens quality of amendments, because it becomes

necessary to please so many legislators with different viewpoints.

Present Provision: A majority of each house; passage in only one session.

Other States: 17 other states require only a majority vote of the legislature, but ten of these require passage in more than one session, 18 states require 2/3, 9 states require 3/5. The other 6 states have miscellaneous requirements, e.g., a majority in two sessions or 2/3 in one session.

MCC: A 2/3 vote of each house.

Model Constitution: A majority of all members (not of both houses).

Testimony: A majority favored by the League of Women Voters. 2/3 favored by Representative Donald Fraser. Although Dr. Mitau did not address himself to the legislative majority in his testimony to the Commission, his article in the Minnesota Law Review favors a 2/3 vote of the legislature: "While obviously slowing down the rate of submission, such a formula would enhance submitted amendments' chances with the voting public."

Recommendation: The majority of the Committee feels a majority of the legislature is sufficient. The chairman feels 3/5 would be a help in selling an easier amendment process to the voters and would also, as Dr. Mitau argues, enhance chances of passing future amendments.

B. Submission of Amendments by Initiative

Comment: Proponents of initiated amendments argue that, while not often used and very seldom successful, citizens should have access at some point to changing their basic charter of government (see comment of Model Constitution below).

Present Provisions: Minnesota, of course, makes no provision for initiative either for statutes or amendments. In 1916, during the Progressive Reform era, when initiative, referendum, and recall were being widely advocated, an amendment allowing initiated measures was voted on and defeated in Minnesota.

Other States: 14 other states provide for initiated amendments. In addition, Illinois' new constitution provides for the initiative on matters pertaining to the legislative article, on the theory that the legislature is more likely to be unresponsive on questions relating to its own composition and function.

MCC: No mention of the initiative.

Model Constitution: Allows initiative both for statutory and constitutional legislation. "Some way should be provided by which the people may directly effect constitutional change without depending on existing governmental institutions. No extensive use is either expected or hoped for...The initiative is merely a salutary counterweight to refusal by the legislature.. to take popularly desired action."

Testimony: The Minnesota Civil Liberties Union strongly advocates inclusion of the initiative for amendments.

Recommendations: The Committee does not feel the initiative would be worth the fight. It is almost uniformly unsuccessful; ten initiated amendments voted on between 1968 and 1970; all failed. To include this alternative in a Gateway Amendment would increase its controversial aspects. The method has often been used in emotional, high-pressure situations. One authority points out that the one-man, one-vote decisions have taken care of the dangers the initiative was intended to overcome.

C. Proper Content of an Amendment--"Multifarious" Amendment Question

Other States: The experience of other states is obviously of little use in this judicial question, but it is worth noting that other states have encountered the same problem, since several Gateway Amendments have specifically provided that an entire article may be amended and submitted to the voters as a single question. (For what it is worth, we add that 30 states prohibit multifarious amendments. In addition, two states limit the number of articles that can be amended at one election.)

MCC: This body recommended liberalizing the restriction on multifarious amendments by the following wording: "No proposal for the amendment or alteration of this constitution which is submitted to the voters shall embrace more than one general subject and the voters shall vote seperately for or against each proposal submitted."

Legislative History: An amendment deleting this entire sentence, thereby allowing the legislature complete discretion in framing amendments, was rejected by the voters in 1948, receiving only 25% of favorable votes.

Model Constitution: No limits are put on legislative discretion in framing amendments.

Judicial Interpretation: The courts have made several rulings on multifarious amendments, but have never been asked to rule on whether revision of an entire article is constitutional.

Whether or not an amendment is multifarious is a question for judicial interpretation, said the Supreme Court in Winget v. Holm, 187 Minn.78 (1932). The court has the power to direct the Secretary of State to refrain from preparing and distributing ballots containing several constitutional amendments to be voted on together.

The court has, on more than one occasion, proved very liberal in allowing multiple changes within one amendment: taxation of national banks and on income tax (Winget v. Holm); extending the legislative session and allowing legislators to run for other offices; (Fugina v. Donovan 259 Minn.35 (1960); lowering the voting age and setting the age for holding office (Opatz v. St.Cloud, Minn.Mar.18,1972).

The court has said that the purpose of the provision of Article XIV preventing multifarious amendments is to prevent deceit of the public, to allow freedom of choice, and to prevent "logrolling".(Fugina)

An amendment will not be found unconstitutional simply because its provisions might have been submitted seperately. (Winget)

However, the changes must be rationally related in purpose, plan or subject. (Fugina)
If the changes made by an amendment are relatively equal in importance the court will scrutinize them more closely than if relatively unequal in importance. (Fugina)

The courts "owe great deference to the judgment of the legislature as to matters within its purview." (Fugina) Again, "If we can reasonably sustain what the legislature intended to do, it should be done." (Opatz)

Nevertheless, in Fugina the court warned that "the logical relationship between the propositions is somewhat remote, and perhaps as remote as is possible." The court went on to say that its approval of an amendment lengthening the session and allowing legislators to run for other offices "does not necessarily imply that it would be proper to present as a single proposed amendment a provision for extending the term of the legislature and a provision establishing the basis of representation. We intimate no opinion as

to whether or not these propositions might properly be joined, but use this merely as an illustration of propositions whose significance might require seperate submission to the voters even though the present proposal is held proper."

Possible Recommendations: If the Commission pursues the path of phased, comprehensive revision, we will undoubtedly need to amend an entire article at one time. The question of multifarious amendments is therefore highly crucial to the entire Commission; and this Committee urges that the fullest possible attention of the fine legal minds on this Commission be directed to this question.

One approach is to leave unaltered the language of the last sentence of Section 1, Article XIV. This might be termed the bold, but expedient approach. We are daring more; but if we succeed, we would avoid the danger of losing a constitutional amendment to other parts of the article by including a controversial change in this sentence.

The Committee inclines to this approach. We count on judicial deference to legislative (and Commission) judgment. Perhaps no one would challenge the attempt to amend an entire article; if not, a second attempt might be even more acceptable to the court. If, on the other hand, a challenge was presented, and the court acceded to the challenge, a special session of the legislature might be called to rearrange the amendments. To expedite such a solution, an early

test case might be arranged. (If the flexible session amendment passes, the amendment could be passed in the first year so that the court case would be decided by the second year giving a guide to the kind of amendments the legislature might propose.

A second approach would be to delete the sentence on multifarious amendments. This might prove as unappealing to the voters as it did in 1948, and would lose the other improvements we make in the article. On the other hand, an educational campaign might convince the voter that to proceed with constitutional improvement, this deletion is needed.

Or we might go the route of the MCC, being even more specific by adding the word "article" to their suggestion: "No proposal for the amendment or alteration of this constitution which is submitted to the voters shall embrace more than one article or general subject and the voters shall vote seperately for or against each proposal submitted."

D. Majority Required to Ratify an Amendment

Comment: The chief roadblock to expeditious revision by amendment is that provision of Article XIV which requires the approval of a majority of everyone who votes in the election.

Present Provision: .."said amendments shall be submitted to the people for their approval or rejection at any general election and if it shall appear, in a manner

to be provided by law, that a majority of all the electors voting at said election shall have voted for and ratified such alterations or amendments, the same shall be valid to all intents and purposes as a part of this constitution."

Constitutional History: The history of this provision is involved and interesting. Originally, both the Republican and Democratic constitutional conventions had included an extremely difficult amending process. In the final conference committee which evolved one constitution out of the two party documents, the amending provision became involved with what historians regard as the central theme of the conventions--Negro suffrage. The Republicans, who favored such suffrage, knew it was too explosive to be guaranteed in the constitution, and wanted it to be submitted as a seperate proposal along with the constitution at the ratification election. The Democrats refused. Republicans then proposed that the difficult amending process be eased on this one question, allowing Negro suffrage to be approved by a majority who voted on the issue, not in the election. Inexplicably, the Democrats countered with the proposal that this change apply to all amendments. And so it was decided. (An interesting footnote: The one word of commendation of the compromise constitution that was uttered in the Republican debate was: "It can be easily changed.")

This easier amending majority remained in the constitution until 1898. In those forty years, 66 amendments

were proposed and 48 passed. According to a League of Women Voter's publication: "Why Minnesota adopted the more difficult provision in 1898 has not been fully explained, although there is conjecture that important interests and large businesses favored the change for special reasons." *

Ironically, the amendment of 1898 providing the more difficult ratifying majority would not have passed under its own provisions, since it did not receive a majority of the votes cast at the election.

Other States: Minnesota is one of only four states which now require that amendments receive approval from everyone voting at the election. (One of the four makes the provision a little easier by providing that the majority be, not of all electors, but of those voting for Governor.)

Majority voting on proposal.....	42 states
Majority voting in election.....	4 "
No voter approval.....	1 "
2/3 voting on proposal.....	1 "
3/5 voting on proposal.....	1 "
Either 3/5 voting on proposal or a majority of electors**.....	1 "

**Experience in Illinois shows that 3/5 is somewhat easier to achieve than a majority of electors, but by no means dramatically so.

MCC: Majority of those voting on the proposal. "This change would restore a provision of the original constitution, and it takes account of the fact that, on the average, one-third of the voters at a general election fail to vote on constitutional amendments, thus in effect defeating such amendments by inaction."

*Professor William Anderson in his History of the Constitution of Minnesota says that because of the belief that the liquor interests favored the change in order to prevent adoption of a prohibition amendment this became known as "the brewers' amendment."

Model Constitution: A majority of those voting on the question.

Testimony: Of the nine persons or organizations testifying before the Commission, in person or by letter, all favored a change from the present majority required to pass a constitutional amendment (two of these in answer to a question). A simple majority of those voting on the proposal was suggested by the League of Women Voters, Secretary of State Arlen Erdahl, Congressman Bill Frenzel, and Congressman Don Fraser; 55% was suggested by former Representative Jack Morris; the others, Professor Frank Sorauf, Dr. Mitau, the MCLU, and the St. Paul Chamber of Commerce made no recommendation as to amount of the majority.

Arguments for Retaining Present Provision: Some authorities say "a constitution ought not to be too easy to amend." A difficult provision for amending demands a great deal of voter awareness and keeps a minority from changing the constitution. We know that at least one member of this Commission feels a constitution ought to be difficult to amend. At least one member, and perhaps others, feel that we have been doing very well in passing amendments since 1948 and there is no reason to change.

Arguments for Changing the Present Provision: (For the most part, these are taken from the testimony of those appearing before the Commission.)

1. An enormous amount of effort is expended by ad hoc committees set up to pass amendments and by such organizations as the League of Women Voters,

which speaks of the great amount of time and energy (and money, we know) needed to capture the attention of every voter with amendment information.

The League says it is necessary to spend as much time explaining the process, and the necessity for voting, as in explaining the amendment.

2. The present provision gives undue weight to the non-participating voter. To count all non-votes as no votes is unrealistic. Many who fail to vote would favor the amendment if they understood it. Comparison of precincts with voting machines and precincts voting by paper ballot proves that many voters simply fail to find the amendments on voting machines.

3. The difficult majority now used makes legislators wary of putting on the ballot as many amendments as they know the constitution needs. They fear jeopardizing a favored amendment by more controversial ones.

4. The difficult ratifying vote wastes time and money. Since 1920 alone, 10 amendments which were rejected where first submitted were finally adopted-but only after being resubmitted, some as many as four and five times. Minnesota had to vote 30 times to finally adopt these 10 amendments which were generally quite non-controversial.

5. The present majority is undemocratic. A minority can thwart the will of the majority. A citizen's vote is diluted in the same way as it is under an unfair reapportionment. It is not fair that amendments

which have received as high as a 75% "yes" vote and only 25% "no" vote should not be adopted.

6. State constitutions, which are more detailed and contain more statutory material than the federal constitution, need flexible, not rigid, amending procedures. States recently revising their constitutions have recognized this; and made it easier by many different provisions, for citizens to change their basic charters.

Recommendations: The Amendment Process Committee is unanimous in agreeing that the present amending majority is unfair, unworkable, and will impede implementation of the work of this Commission. Two of the members felt that voters should be able to change their basic document by a simple majority of those voting on the question. One member felt that to require 55% would be fair enough, would guard against passage of an ill-advised amendment by an energetic minority, and would help sell an amended Article XIV to the voters.

E. Submission of Amendments at a Special Election

Comment: It is generally believed that submission of amendments at a special election would make them easier to pass. There may also be times (as with the debt limit that held up the building program a few years ago when an amendment needs action more quickly than at the next general election.

Present Provision: Not allowed under the present constitution. (This has never been the subject of a court case, but an attorney general's opinion agrees "no".)

Other States: 25 states allow for special elections on amendments although how many amendments are so submitted is impossible to say. Some states present amendments at primary as well as general elections. In 1966 Louisiana and West Virginia voters turned down amendments providing special elections for amendments; Nebraska adopted such a change in 1968.

MCC: Added a provision for special elections on amendments, provising that such election not be called at the same time or within thirty days of a general election.

Model Constitution: Specifies either a general or special election, neither of which may be held less than two months after legislative adoption of the amendment.

Recommendation: The Amendment Process Committee believes that because time may be of the essence in some cases, the Legislature should be able to provide for a special election by a two-thirds vote. In so doing, we are not encouraging the placement of amendments on special elections...only providing for the contingency in which a time factor might be critical in revising a constitutional provision.

VII RECOMMENDED CHANGES IN ARTICLE XIV, Sections 2 and 3 (CONSTITUTIONAL CONVENTION)

If the Commission decided that the Constitution should be revised by amendments, then the question arises: Shall we also advise changes in the provisions on a constitutional convention, such as we would recommend if we were to propose revision by a con-con?

The following comparison of our provisions for a con-con reveal that while we are more flexible in this revising procedure than in the approval of amendments, Minnesota still makes it very difficult to call a con-con and to ratify it. In general, members of the Amendment Process Committee feel that it should be somewhat more difficult to adopt a new constitution than to accept an amendment.

A. Submitting the Question of Calling a Convention to the Voters

Present Provision: 2/3 of the members of each house.

Other States:
Majority of each house....26 states
2/3 of each house.....20 "
3/5 of each house..... 2 "
Petition by people..... 1 "
Automatic each 10 yrs..... 1 "

If not otherwise submitted by the legislators, periodic submission to the voters every ten or twenty years is provided in 11 states.

MCC: Mandatory submission every 20 years or at any time by a 2/3 vote of each house.

Model Constitution: Majority of all members (not of each house). If not otherwise submitted, question must appear on ballot every 15 years.

Recommendation: A 3/5 vote of each house, no periodic submission, though it may be deemed undemocratic to

recommend against both initiated amendments and mandatory submission of the convention question.

B. Vote by People on Question of Holding a Convention

Present Provision: Majority of all those voting in the election, as for amendments.

Other States:
Majority voting on proposal	34 states
Majority voting in election	12 states
No vote provided	3 "
Majority voting in election or 3/5 voting on proposal	1 "

MCC: Majority voting on the proposal

Model Constitution: Majority voting on the proposal.

Recommendation: A 3/5 majority of those voting on the proposal. We also recommend that a special election may be provided for this purpose if approved by 2/3 of the legislature (as is recommended for amendments).

C. Ratification of the New Constitution

Present Provision: 3/5 of those voting on the proposal (changed in 1954 from a majority of those voting in the election).

Other States:
Majority voting on proposal	26 states
Majority voting in election	9 "
No provision(although legislature uniformly provides)	13 "
3/5 voting on proposal	1 "
Majority of electors or 3/5 on proposal	1 "

MCC: Majority voting on proposal

Model Constitution: Majority voting on proposal. (Also specifically provides that document may be submitted as a whole or in parts or with alternatives.)

Recommendation: 3/5 of those voting on the proposed constitution. We also recommend that the proposal be submitted in a special election to be held not less than 60 days or more than six months after the adjournment of the convention, as determined by the convention itself. This is the recommendation of the MCC, the Model Constitution, and of many states.

VIII SUMMARY OF RECOMMENDATIONS:

In summary, the recommendations of the Amendment Process Committee are as follows:

The Committee recommends that the constitutional revision recommended by the Constitutional Study Commission be implemented through a series of pahsed amendments. As the first phase of the revision, the Committee recommends that a new constitutional framework be created through adoption of a "gateway amendment" and a non-substantive amendment which would more logically organize our present Constitution and remove obsolete and unnecessary provisions. The Committee recommends that this first phase be considered by the 1973 session of the legislature and submitted to the people for a vote at the 1974 general election.

The Committee further recommends that the 1973 legislature authorize the creation of an adequately staffed and financed legislative-citizen commission which would have as its primary responsibility an in-depth study and recommendation of amendments to be considered in a second phase. This second phase of the revision would be considered in the 1975 legislative session and submitted to the voters at the next election.

In subsequent revision of the constitution, the Committee recommends that the legislature and the voters continue to have the benefit of background study and recommendations of a similar constitutional study commission and that the revision continue in a phased, orderly manner.

In drafting the above-mentioned "gateway amendment":

The Committee recommends retention of the present provision in Article XIV, Section 1 requiring a simple majority of the legislature to submit a proposed constitutional amendment to the voters.

The Committee recommends against inclusion of a provision allowing the submission of amendments through the initiative.

The Committee recommends no change in the provision in Article XIV, Section 1, which requires that amendments be submitted seperately to the voters.

The Committee recommends that the present requirement in Article XIV, Section 1 that a proposed amendment must be approved by a majority of those voting in the election be reduced to a majority of those voting on the question.

The Committee recommends an addition to Article XIV, Section 1, to provide that amendments be allowed consideration at a special election if approved by a two-thirds majority of the Legislature.

The Committee recommends that the legislative requirement for submission of a constitutional convention in Article XIV, Section 2, be reduced from a two-thirds majority of both houses to a three-fifths majority of both houses.

The Committee recommends an amendment to Article XIV, Section 2, to change the popular majority required to approve a constitutional convention call from a majority voting in the election to three-fifths of those voting on the question.

The Committee recommends against mandatory periodic submission of the question of calling a constitutional convention.

The Committee recommends a change in Article XIV, Section 3, to provide that a special election may be held to consider a proposed constitution not less than 60 nor more than 180 days following the convention's adjournment.

DRAFT LANGUAGE FOR "GATEWAY AMENDMENT"

A bill for an act

Proposing an amendment to the Minnesota Constitution, Article XIV; regulating the procedure for amending the Constitution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. The following amendment to the Minnesota Constitution, Article XIV is proposed to the people. If the amendment is adopted the Article shall read as follows:

ARTICLE XIV

Constitutional Revision

Constitutional Amendments. Section 1. Whenever a majority of ~~both~~ each of the houses of the legislature shall deem it necessary to alter or amend this Constitution, they may propose such alterations or amendments, which proposed amendments shall be published with the laws which have been passed at the same session, and said amendments shall be submitted to the people for their approval or rejection at any general election~~,--and~~. If proposed by an affirmative vote of two-thirds of the members of each of the houses of the legislature, the alteration or amendment may be submitted to the people for their approval or rejection at a special election called for such purpose not less that 30 nor more than 60 days after passage of the proposal unless a general election shall be held within that period. If it shall appear, in a manner to be provided by law, that a majority of all the electors voting upon the question at ~~said~~ any election shall have voted for and ratified such alterations or amendments, the same shall be valid to all intents and purposes

as a part of this Constitution. If two or more alterations or amendments shall be submitted at the same time, it shall be so regulated that the voters shall vote for or against each seperately.

Constitutional Conventions. Sec. 2. Whenever ~~two-thirds~~ three-fifths of the members elected to each ~~branch~~ house of the legislature shall think it necessary to call a convention to revise this Constitution, they shall recommend to the electors to vote at the next ~~election for members of the legislature,~~ general election for or against a convention. If proposed by an affirmative vote of two-thirds of the members of each house of the legislature, the question of calling a convention to revise this Constitution may be submitted to the people for their approval or rejection at a special election called for such purpose not less than 30 nor more than 60 days after passage of the proposal unless a general election shall be held within that period, ~~and~~ If a three-fifths majority of all the electors voting upon the question at ~~said~~ any election shall have voted for a convention, the legislature shall, at their next session, provide by law for calling the same. The convention shall consist of as many members as the House of Representatives, who shall be chosen in the same manner, and shall meet within three months after their election for the purpose aforesaid. Section 9 of Article IV of the Constitution shall not apply to election to the convention. Any convention called to revise this constitution shall submit any revision thereof by said convention to the people of the State of Minnesota for their approval or rejection at ~~the next general~~ a special election held not less than ~~90 days after the adoption of such revision,~~ 60 days nor more than 180 days after adjournment of the convention, and, if

it shall appear in the manner provided by law that three-fifths of all the electors voting on the question shall have voted for and ratified such revision, the same shall constitute a new constitution of the State of Minnesota. Without such submission and ratification, said revision shall be of no force or effect.

~~Submission to people of revised constitution drafted at convention.--Sec. 3.--Any convention called to revise this constitution shall submit any revision thereof by said convention to the people of the State of Minnesota for their approval or rejection at the next general election held not less than 90 days after the adoption of such revision; and, if it shall appear in the manner provided by law that three fifths of all the electors voting on the question shall have voted for and ratified such revision, the same shall constitute a new constitution of the State of Minnesota. Without such submission and ratification, said revision shall be of no force or effect.--Section 9 of Article IV of the Constitution shall not apply to election to the convention.~~

Section 2. The proposed amendment shall be submitted to the people at the 1974 general election. The question to be submitted to the people is:

"Shall the Minnesota Constitution be amended to provide for the submission of constitutional amendments and the question of calling a constitutional convention to the people at special elections in certain instances, to alter the majority required for submission and approval of the calling of a constitutional convention, to alter the method of computing an affirmative vote upon a proposed amendment

or convention, and to provide for the submission of a new constitution to the voters for their approval or rejection at a special election to be set by the constitutional convention?

Yes _____

No _____

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Moorhead Hearing, May 4, 1972

Ruth Herring, Moorhead League of Women Voters
State Representative Doug Sillers, Moorhead

St. Paul Hearing, June 1, 1972

Jack Morris, St. Paul
Professor Frank J. Sorauf, University of Minnesota
Secretary of State, Arlen Erdahl
Dr. G. Theodore Mitau, Chancellor, Minnesota State College System
Mrs. Mary Ann McCoy, President, Minnesota League of Women Voters
Matthew Stark, President, Minnesota Civil Liberties Union

Letters

P. K. Peterson, Chairman, Public Service Commission, Nov.4, 1971
Rudolph Hanson, Attorney, Albert Lea, December 18, 1971
Congressman Bill Frenzel, April 18, 1972
Congressman Don Fraser, January 25, 1972
Matthew Stark, President, Minnesota Civil Liberties Union Feb.29,1972

APPENDIX TO AMENDMENT PROCESS COMMITTEE REPORT

Results of Amendments Proposed to the Minnesota Constitution, 1958-1970

From 1858 through 1970 Minnesota voters considered 180 proposals made by the State Legislature for changes in their constitution. Slightly over half of these amendments have been approved by the voters.

In the 40 years when ratification required only a majority of those voting on the proposal more amendments were accepted than in the 70 years when the majority was raised to include all those voting in the election.

	Total 1858-1970	1858-1898	1900-1970
Amendments Submitted	180	66	114
Amendments Adopted	93(52%)	48(73%)	45(39%)
Amendments Rejected	87	18(27%)	69(61%)

A cursory examination of the 180 amendments submitted by the legislature to the voters indicates, to the writer, at least, that they were for the most part necessary and beneficial. It seems to this Committee that when an amendment has survived the legislative processes of committee scrutiny and majority passage, and has competed successfully with the many other amendments for a place on the necessarily limited ballot, it is worthy of acceptance by a majority of those who are informed enough of its content to vote on it. If the amendment has serious drawbacks or is the subject of great controversy, the informed voter will be almost sure to reject it.

Page 3 of this Appendix contains data on amendments which were adopted before 1898 but which would have failed with our present ratifying majority. It will be noted that about one-third of the

93 amendments which were ratified by a majority of those voting on them (the original constitutional majority) would have failed under our present system. (For example, the amendment to authorize local governments to levy special assessments for local improvements passed by a majority of 91%, but would have been defeated under our present rules.)

Analysis on subsequent pages gives other pertinent data on the history of amendment adoption and rejection in Minnesota:

Page 4 shows two things:

(1) The number of amendments rejected since 1900 which would have passed under the easier amending majority of the original constitution.

(2) Amendments which were submitted on two or more occasions.

Page 5 shows the amendments which were rejected under the easy amending process of our state's first 40 years. This table demonstrates that the requirement of a simple majority does not lead to indiscriminate adoption of amendments.

Page 6 shows the number of amendments which received a 50%, but not a 55%, majority of votes.

TWENTY-NINE AMENDMENTS WHICH PASSED UNDER THE EASY AMENDING MAJORITY of 1857-1898 WHICH WOULD HAVE FAILED UNDER THE PRESENT REQUIREMENT OF A MAJORITY OF ELECTORS

Year	Effect of Amendment was to:	Adoption %
1869	Abolish Manomin County	89
1869	Authorize special assessments for local improvements	91
1872	Authorize state loans for asylum buildings	52
1872	Exempt stockholders in manufacturing or mechanical businesses from double liability	54
1872	Restrict local governments from issuing bonds to aid railroads	71
1873	Provide more effective safekeeping of state funds	83
1875	Remove limit of one judge per judicial district and six judicial districts	55
1875	Allow women to vote in school elections	56
1875	Prescribe manner of investing school funds	70
1876	Allow governor to veto items in appropriation bills	91
1876	Allow district judges to serve on Supreme Court when justices of latter are disqualified	87
1877	Authorize biennial legislative session of 90 days	65
1877	Extend legislative terms to two and four years	57
1877	Provide state canvassing board(to replace legislature)	62
1877	Prohibit public funds for sectarian education	68
1882	Authorize levy for water main assessments by frontage foot	66
1890	Allow jury verdicts by 5/6 in civil cases	62
1892	Extend prohibition against special legislation	80
1894	Impose inheritance tax	72
1896	Establish pardoning board to replace governor	74
1896	Prohibit aliens from voting	65
1896	Authorize home rule for cities	65

Year	Effect of Amendment was to:	Adoption %
1896	Allow compensation for property damaged by public use	64
1896	Allow towns, villages, cities to borrow from school funds	78
1896	Tax corporation on flexible schedule	79
1898	Allow women to vote for, and serve on, library boards	62
1898	Make amending process more difficult	68
1898	Implement home rule provisions	67
1898	Set up road and bridge fund	64

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1898	Set up road and bridge fund	64

1932, 1934	Authorize tax of lands acquired by state through rural credit system
1934	Define academic property for tax purposes
1934	Autorize additional trunk highway routes
1950,1952(1956)	Redistribution of various highway user tax funds
1952 (1962)	Change requirement for enactment and loan of school and University funds
1952 (1954)	Allow legislators to be delegates to con-con; ratification by 60%
1952 (1960)	Clarify elective franchise section
1952 (1954)	Authorize changes in probate court system
1958,1960(1966) (1968)	Permit legislation to hold other offices
1960 (1962)	Lengthen legislative session

AMENDMENTS REJECTED BEFORE 1898

Grant negro suffrage (defeated 1866, 1868, ratified 1869)

Abolish grand jury for felony (defeated 1869; ratified 1914)

Tax shares in state and national banks

Authorize sale of 500,000 acres of internal improvement lands and invest proceeds in state or national securities

Exempt holders of railroad stock from double liability

Authorize state loans for asylums (defeated 1872; adopted 1873)

Provide biennial legislative sessions (defeated 1874; adopted 1878)

Provide two and four year terms for representatives and senators, respectively (defeated 1874; adopted 1878)

Provide state canvassing board (instead of legislature) (defeated 1874;adopted 1878)

Establish single liability for stockholders in ordinary businesses

Establish single liability for all stockholders except in bank, (defeated 1876, 1878)

Authorize women to vote in local liquor option elections

Authorize sale of internal improvement lands and use proceeds to pay railroad bonds

Remove limit on legislative sessions

Tax compensation of legislators

Authorize gross earnings and tonnage taxes on iron ore

NINE AMENDMENTS WHICH PASSED OR WOULD HAVE PASSED WITH A SIMPLE MAJORITY OF THOSE VOTING ON THE PROPOSAL WOULD HAVE FAILED WITH A 55% MAJORITY

1872	Allow state loans for asylum buildings	52%
1872	Exempt stockholders in manufacturing or mechanical business from double liability	51
1882	Allow sale of swamp lands and appropriation of proceeds	50
1918	Prohibit manufacture and sale of liquor	52
1932	Allow imposition of income tax	50.6
1936	Authorize exchange of state land for U.S. and private lands	54.7
1952	Change loan and investment requirements for permanent and University funds	54.7
1954	Permit legislators to be delegates to a con-con and set ratification vote at 60%	54.69
1970	Reduce voting age to 19 years	54.9

BILL OF RIGHTS COMMITTEE HEARING

Room 15 State Capitol
April 6th, 1972 10 AM

Members Present: Mrs. Diana Murphy, Chairman, Rep. L. J. Lee
Senator Robert J. Brown

Chairman Murphy called the hearing to order at 10:05 AM. The first testimony was from Professor Thomas Murton, Murton Foundation for Criminal Justice, Inc., speaking concerning the rights of inmates in penal institutions. He recommended open parole board hearings with reasons given for denying paroles, visitation from people other than familes, elimination of all mail inspection. He stated he would submit language for a change in the Constitution to provide basic human rights to prisoners, although 95% of his suggested changes could be put into practice with the present Constitution if the administrators would.

Mrs. Anne Truax, Chairwoman of the Twin Cities Womens Action Coalition, spoke in favor of a state amendment in favor or women's rights, simple wording. Ste stated the federal law can never replace entirely the need for state law.

Ms. Deonne Parker, Minnesota Civil Liberties Union, spoke in behalf of rights of women. She stated the present apparatus does not provide a suitable tool to give women the rights they should have. She suggested an amendment such as the Pennsylvania legislature passed.

Mr. George Stephenson, representing Minnesota Civil Liberties Union, spoke concerning the rights of those institutionalized. (No written statement). He expressed agreement with Professor Murton's comments. He strongly recommended serious consideration be given to the adoption of an ombudsman system to make the Bill of Rights more meaningful for those hospitalized and the entire population.

Mr. David Ziegenhagen, representing Mental Health Association of Minnesota, (no written statement) spoke regarding the rights of the mentally ill. He stated the Act of 1967 brought about significant change but felt some changes in the Bill of Rights could be made to extend to individuals labeled "mentally ill". He stated that persons committing a crime have more rights than those who are mentally ill.

Mrs. Lu Stocker, State GOP Chairwoman stated she personally feels the quality would be strengthened to have the national wording of the equal rights amendment in the Minnesota Constitution even though the amendment be ratified nationally.

Mrs. Kathy Olson, Twin Cities Chapter National Organization for Women, cited several examples of discrimination against women and streesed "equal rights".

Ms. Jackie Moren, University Young Womens Christian Association, stressed the right to true equality, the right to clean environment and the right to privacy all be put in the Bill of Rights. She cited discrimination in the appointment of women on this Commission. She offered research assistance from some of the YWCA members.

Ms. Sherry Lurk, speaking for Emma Willard Task Force on Education, stated the Constitution should contain a clause guaranteeing equal rights for women, notwithstanding federal action.

Ms. Cynthia Attwood, University of Minnesota law student, stated state rights are important since they affect individuals more directly in their daily lives. She also mentioned the Supreme Court may not always be so vigorous in individual rights. She recommended the following wording:

> "Equality of rights shall not be abridged or denied on the basis of sex by the state or any subdivision, agency or instrumentality thereof or by any person. These rights are enforceable without action by the legislature, but the legislature by law may establish reasonable exemptions relating to these rights and provide additional remedies for their violation."

Ms. Janet Dietrich, Womens Political Caucus, favored equal rights amendment as proposed in Congress. Her organization had not considered wording offered by the previous speaker but stated it would interest members. (No written statement)

Ms. Helene Borg, State League of Human Rights Commission preferred an amendment identical to the 27th Amendment to the U.S.Constitution providing equal rights regardless of sex. She favored a jury decision for commitment to a mental institution with the evidence being presented by doctors.

Mrs. Joseph Brink, St. Joseph, Minnesota, presented information regarding patients at the Cambridge Hospital.

The hearing was recessed at 12:30 P.M. and reconvened before the full Commission at 2:30 P.M. The minutes covering the afternoon hearing are included with the Commission minutes of April 6th.

Mrs. Diana Murphy, Chairwoman
Senator Robert J. Brown
Rep. L. J. Lee

MINUTES OF THE BILL OF RIGHTS COMMISSION
OF THE CONSTITUTIONAL STUDY COMMISSION
HELD IN MOORHEAD, MINNESOTA, MAY 4, 1972

Reporter: Joseph Hudson, Researcher
Present: Mrs. Diana Murphy
Senator Robert J. Brown
Representative L. J. Lee

David Strauss, Student Body President - Moorhead:

Offered arguments supporting reduction in age for holding elective office.

(See prepared statement)

Mrs. Bernice Arett, Representing Women's Political Caucus:

Supported Equal Rights Amendment.

(See prepared statement)

In addition discussed with Commission quotas for admissions to law schools, etc.

David Strauss:

Urged permitting students to vote where they are in school. Students are more knowledgeable in areas where they are in school.

Senator Brown:

How can we have a provision either statutory or constitutional which would prohibit people from every 30 days moving from one area to another?

Mrs. Arett and Senator Brown:

Voter registration would solve many of these problems.

Representative Lee:

Can it be said that students who come to school from other areas have as much right to participate as others who may live there and will stay, whereas the student upon completion of college will leave it?

Answer:

Conclusion is:

1. that mutual trust will be a big factor
2. that many students won't vote at school, but at parents home
3. that for political purposes students are often encouraged to vote at parents home

Question:

What obstacles do students face in registering to vote?

Answer:

None.

David Strauss:

800 new registered to vote this year.

AGE TO HOLD OFFICE

David Strauss:

Should be lowered.

Question:

Do students tend to stay in the area after graduation?

Answer:

Many do, but they have to go where the jobs are.

Mrs. Arett:

It is a fallacy to say students vote as a block.

David Strauss:

Students/College give a lot to the community

- Continuing education
- Opera
- Arts

Question - Representative Lee:

What if County Commissioners were 18 years old?

Mrs. Arett:

They are very knowledgeable.

BILL OF RIGHTS COMMITTEE HEARING
June 21, 1972, Room 118 State Capitol
10 AM to Noon, 1 P.M. to 4 P.M.

Mrs. Diana Murphy presided at the hearing and testimony was taken from the following persons relative to Article I, Bill of Rights, and Article VII, Elective Franchise.

John Martin, Committee for Effective Crime Control, submitted a recommended amendment to Article I, to assure citizens the right to keep and bear arms free from fees and taxes.

Byron Starns, Attorney General's Office, stated his office opposes any constitutional provision granting the right to keep and bear arms. He stated the proposed amendment would preclude any handgun legislation by the Legislature whatever.

Jon Willand, Committee for Effective Crime Control, mentioned that the Attorney General has suggested confiscation of 90% to 95% of firearms in the State. He feels the main reliance is on the individual to legitimately defend himself.

Richard Rundbeck, law student at the University of Minnesota, recommended the Constitution provide an individual the right to know and examine his or her record in public or private institutions, and to prohibit dissemination of information relative to reputation unless the person involved is notified or unless a record is kept of the persons to whom information is given.

Franklin Knoll, Executive Director, Minneapolis Urban Coalition Action Council, recommended the amendment of the Constitution with the following language:

> "No person may be denied the enjoyment of his or her civil right or be discriminated against in the exercise thereof because of race, color, creed, religion, sex, ancestry, birth, social origin or condition, or political or religious ideas."

He stated the Coalition believes it is long past time for Minnesota to catch up with the spirit and letter of the U.S. Constitution and its Fourteenth Amendment.

Michael Wetherbee, Minnesota Civil Liberties Union, requested the Committee to consider two amendments to the Constitution:

1) Art.VII,Sec.1 (add this sentence at end) "Any person otherwise qualified to vote at a general election shall be qualified to vote in the primary election next proceeding that election."
2) Art.VII, Sec.7, recommended no age restrictions on potential candidates for public office.

The morning hearing was recessed at 11:50 A.M.

Mrs. Murphy called the afternoon hearing to order at 1:05 P.M. the following persons testifying.

Charles Van Heuveln, United Cerebral Palsy, pointed out many areas in which the handicapped person is discriminated against and recommended the Constitution be amended to guarantee equal rights.

Peter Benzian, Minnesota Public Interest Research Group, stated there are over twenty million people in the United Stated with a physically disabling condition severe enough to interfere with their normal daily activities, approximately 100,000 in Minnesota. He proposed the following amendment which is not confined to the problem of persons with physical and mental handicaps:

1) No person shall be denied the equal protection of the laws nor shall the state or any person, firm, institution, corporation or other entity discriminate against any person on the basis of race, color, creed, national ancestry, sex, relitous opinion or physical or mental handicap.
2) The Legislature shall have power to enforce this Article by appropriate legislation.

Rev. Robert Lovering, pointed out the architectural barriers which deprive the handicapped person of rights others take freely for granted. He stated millions of dollars are spent annually for rehabilitation only for the rehabilitated person re-entering the world to find physical barriers.

Mrs. Lorraine Arvidson, Secretary for United Blind of Minn. Inc., proposed the following equal rights amendment:

"No person shall be denied equal protection of the laws because of physical disability."

She stated the second injury provision of the Workman's Compensation law of our State cometimes stands in the way of obtaining adequate education and employment. She mentioned problems of obtaining individual health and accident policies of insurance, and also the new problem created by the new law of allowing a right turn on a red light following a complete stop.

Robert Lindstrom, Minnesota Epilepsy League, presented information concerning those affected with epilepsy, stating that they have difficulty finding jobs even though 49% of epileptics on medication are completely controlled and 37% of the rest are partially controlled. He stressed they are looking for the natural rights they are entitled to.

Rev. Barbara Andrews, Assistant Pastor of Edina Community Lutheran Church, explained it was impossible for her to attend the hearing by means of public transportation since she is handicapped. She told of refusal of cab companies to give her service, high rates, and the restriction on some companies of serving outside the metropolitan area. She stressed the need for a constitutional amendment to require provision of public transportation for the handicapped.

Gene O'Neil, Executive Director of United Cerebral Palsy of Greater St. Paul, Inc., pointed out several reasons given for the non-hiring of the handicapped even though the applicant is capable and qualified to do the job. He urged the adoption of an Equal Rights for the Handicapped Constitutional Amendment. He stated Illinois and Montana have this provision.

John Du Rand, Executive Director, Occupational Training Center, Inc., recommended amendment of the Constitution to eliminate language which limits the right to vote of the mentally retarded and mentally ill, stating the current language is in violation of Article XIV of the Federal.

Jack Baker, Minnesota Student Association, stated a need for a Constitutional Amendment to guarantee to all people the right to love the individual of one's choice and the right to express that love openly, honestly and proudly. He recommended that Section 16 of Article I be amended to include the words, "jus societatis congeneratae". The section would then read: "The enumeration of rights in this Constitution shall not be construed to deny or impair others retained by and inherent in the people including jus societatis congeneratae...". He stated the phrase is Latin and the most precise to be offered to address the issue at hand.

Mrs. Alice Cowley, stated she is a concerned citizen involved in the struggle for women to gain their rights in determining whether or not to become a parent. She recommended annulment of all laws that affect a woman's right to decide her own reproductive and sexuality, stating that born persons should be guaranteed rights ahead of the unborn or potential life.

Mrs. Darla St. Martin, Women for Universal Human Rights, opposes abortion and recommended a constitutional amendment which would give equal rights to all human beings including the unborn.

Mrs. Joseph Brink, St. Joseph, recommended the State provide funds to educate children in private and church-related schools.

Mr. Thomas Mooney, Minnesota Citizens Concerned for Life, recommended a constitutional provision providing equal protection under the law for children before as well as after birth.

Other written statements received were:

Arlen Erdahl, Secretary of State, stated Sec. 1 of Article VII, needs revision to conform to the U.S. Constitution regarding residency requirements. He feels a 30 day requirement in the precinct sufficient time for the voter to learn of the issues and candidates and necessary time for election authorities to transfer registration or other related matters.

Morris Hursh, State Department of Public Welfare, recommended Section 2 of Article I be amended to read:

> Rights and privileges. Sec.2. No member of this State, including those citizens alleged to be mentally disabled or impaired, shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the State otherwise than the punishment of crime, whereof the party shall have been duly convicted.

He further recommended to add a new section as Section 19 to read as follows:

> Inviolability of the body. Sec. 19. No person shall be compelled to undergo procedures involving surgery, convulsive electroshock, confinement of person or bodily movements or any procedure causing irreversible physiological effects, unless informed consent of the person or his guardian is given or unless appropriate procedures have been followed to obtain legal approval for their application in each instance.

The hearing was adjourned at 3:45 P.M.

MINNESOTA CONSTITUTIONAL STUDY COMMISSION
G-19E Administration Building / St. Paul, Minnesota 55155

The contents of this Report are preliminary only, not the final recommendations of the Commission. Therefore do not make any use of the Report without permission.

REPORT OF THE

BILL OF RIGHTS COMMITTEE

TO THE

CONSTITUTIONAL STUDY COMMISSION

ON

SEPTEMBER 20, 1972

* * * *

MS. DIANA E. MURPHY, CHAIRMAN
SENATOR ROBERT J. BROWN
REPRESENTATIVE L. J. LEE

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I. INTRODUCTION

The Bill of Rights Committee of the Minnesota Constitutional Study Commission was given the responsibility of studying two articles of the Constitution: Article I, the Bill of Rights, and Article VII, the Elective Franchise. The committee was made up of Ms. Diana E. Murphy, chairman, Senator Robert J. Brown, and Representative L.J. Lee.

The work of the Bill of Rights Committee differed in some important respects from that of many of the other committees. One of the obvious reasons is that we had more than one article to study. Because of the nature and length of Article VII and the kinds of changes proposed therein, we found it desirable to construct a new form for that article, whereas our recommendations for the Bill of Rights deal only with individual sections. Our committee undoubtedly heard testimony on more individual issues than did other committees, not allowing the kind of detailed consideration some committees were able to give a single problem. We were impressed by the interest shown by citizens in constitutional change and hope that the Legislature will give careful attention to the problems which they raised.

In addition to presenting our final recommendations, the purpose of this report is to provide a record of the issues presented to the committee and the discussion and study which they engendered. It is our hope that the report will thus serve as a useful foundation for the citizens and Legislature

of Minnesota in their own consideration of the Bill of Rights and Elective Franchise articles of the Constitution. With the report is submitted a complete file of testimony, memoranda and correspondence.

In the course of its study the committee conducted three public hearings: all-day hearings in the State Capitol on April 6 and June 21 and a morning hearing on the campus in Moorhead. In addition to public testimony, we reviewed the recommendations of the 1948 Constitutional Commission, looked at the language of other state constitutions and of the Model State Constitution drawn up by the National Municipal League, and pondered a considerable number of suggestions received in writing. We had the good fortune to have before us the very helpful recommendations of the Structure and Form Committee and background papers prepared by the committee's research assistant, Mr. Joseph P. Hudson of the University of Minnesota Law School, and by staff assistant Jon Schroeder. Professors Fred Morrison and Alan Freeman of the Law School provided invaluable advice in what must have seemed to them an endless round of consultations. And finally the committee would like to thank Mrs. Betty Rosas, Commission Secretary, for her good assistance.

II. ARTICLE VII: THE ELECTIVE FRANCHISE

A. INTRODUCTORY NOTE

The democratic goal is to involve the people as much as possible in their government, and constitutions should enhance that attempt. With this in mind, the Bill of Rights Committee began its study of Article VII. In addition to reviewing the testimony and correspondence presented to it, the committee took notice of the increasing mobility of the population and the renewed interest in participating in the political process expressed by many. At the same time the committee wished to keep the Constitution free of unnecessary detail, cumbersome to change and tiresome to read.

The committee began work with the knowledge that some changes in Article VII were required to make it conform to recent federal constitutional developments. The report of the Structure and Form Committee made a number of suggested improvements in the style of the article, and the Bill of Rights Committee itself saw the need for other changes in the interests of clarity and flexibility. In addition, the committee recommends some substantive changes to allow persons qualified to vote in a general election to vote in the primary, to reduce the state residency requirement for voting to thirty days, and to lower the age for holding office to 18 (the latter opposed by one member).

The committee has gone over the whole article very carefully and submits a proposed new article which incorporates

all of these changes. However, if the Legislature wishes to propose some of these changes immediately, or if it fears that certain of the provisions might endanger passage of the whole if combined, it may wish to consider the recommendations separately.

B. RECOMMENDED CHANGES

ELECTIVE FRANCHISE, Section 1

Changes: Voting age changed from 19 to 18 years; state residency requirement changed from six months to 30 days; change to allow persons who will be 18 in time to vote in the general election to participate in the primary; stylistic changes suggested by the Structure and Form Committee (including incorporation of former section 2 into this section); substitution of "who is judged mentally disabled or impaired under procedures established by law" for "who may be non compos mentis or insane"; addition of "except as provided by the Legislature" following the listed restrictions on voting.

Comment: The change in voting age was made to comply with the Twenty-Sixth Amendment to the United States Constitution. A recent decision of the U.S. Supreme Court makes it necessary to change the residency requirement. In Dunn v. Blumstein the Court held that a residency requirement of more than 90 days is unconstitutional, thus making the Minnesota constitutional requirement of six months invalid. The Bill of Rights Committee recommends the substitution of 30 days to make the durational

requirement for residency within the State consistent with that within the precinct. Local registrars seem to manage effectively with the present precinct requirement, and Secretary of State Arlen Erdahl assured the committee that there is no need for a more restrictive state residency requirement.

The committee also recommends that those eligible to vote in a general election be allowed to participate in the candidate selection process. They are already permitted to take part in the precinct caucuses so it seems reasonable to allow them also to vote in the primary.

Since the committee believes that it is desirable for the Constitution to be written in language meaningful to the citizens of the State and because of its concern that persons not be disenfranchised arbitrarily or unnecessarily, it is recommending a substitution for the non compos mentis phrase in former section 2.

The addition of the final phrase, "except as provided by the Legislature", would provide greater flexibility in the restrictions on voting. The committee heard testimony urging the removal of the constitutional restrictions on the voting rights of felons and those who are mentally disabled or impaired, but believes that the suggested addition would allow the Legislature to provide any changes or safeguards felt necessary by the people of the State.

RESIDENCE LOST IN CERTAIN CASES, Section 2

Changes: Replaces former Sections 3 and 4; no substantive change.

Comment: Here the committee attempted to clarify by replacing outmoded language ("seminary of learning," "almshouse or asylum," etc.) and by underlining the fact that the courts consider intent to establish residency within the State as paramount. The committee heard testimony regarding the pros and cons of students voting in college communities as opposed to their place of origin, and it appears to us that the suggested language would serve as a helpful guideline for students and local election officials, permitting those students who consider their college community as their place of residence to vote there.

Although former Section 4 was written in the form of a restriction ("No soldier, seaman or marine...shall be deemed a resident of this State in sonsequence of being stationed within the same."), the United States Supreme Court ruled in Carrington v. Rash that no state can deny residency to a serviceman stationed within it if he intends to make such state his home indefinitely.

LEGISLATURE TO PROVIDE FOR THE EXERCISE OF SUFFRAGE, Section 3

Changes: Replaces Article V, Sec. 2, providing for state canvassing board and sending election returns to the Secretary of State. (The Structure and Form Committee suggested relocating Article V, Sec. 2 in Article VII.)

Comment: This gives the Legislature a general mandate to provide

for the administration of elections without encumbering the Constitution with unnecessary detail or tying the process to a state office (Secretary of State) which may not exist in the future if some current proposals are adopted.

UNIFORM OATH AT ELECTIONS, Section 4

Changes: No change in wording; formerly Article XV, Sec. 3.

Comment: Relocated from Miscellaneous Provisions Article, which the Structure and Form Committee has divided and relocated; the subject matter is appropriate to the Elective Franchise Article.

CIVIL PROCESS SUSPENDED ON ELECTION DAY, Section 5

Changes: None.

ELECTION BY BALLOTS, Section 6

Changes: None.

RIGHT TO HOLD OFFICE, Section 7

Changes: Lowers the age for hodling office from 21 to 18.

Comments: While the committee was divided on this issue, two members felt that persons eligible to exercise the franchise should also be able to run for elective office. This provision would still be subject to age requirements set elsewhere for certain offices (the Governor, Lieutenant Governor and Congressmen must be 25, and U.S. Senators must be 30); and candidates would have to obtain support from other age groups to win. Prior to the passage of the amendment to lower the voting age

in 1970, there was no distinction in the Minnesota Constitution between the minimum voting age and the age for holding office, and the present mention of 21 in Section 7 is confusing if read with Section 25 of Article IV: "Senators and representatives shall be qualified voters of the State..."

The committee member opposed to lowering the age to 18 fears that some young people will not yet have the necessary maturity and experience to serve in elective office.

OFFICIAL YEAR OF THE STATE, Section 8

Changes: Stylistic only.

C. PROPOSED ARTICLE

Article VII. Elective Franchise

ELECTIVE FRANCHISE. Section 1. Every person of the age of 18 years or more who has been a citizen of the United States for three months and who has resided in this State and in the precinct for thirty days next preceding an election shall be entitled to vote in that precinct. The place of voting by one otherwise qualified who has changed his residence within thirty days preceding the election shall be prescribed by law. Any person eligible to vote in a general election shall be entitled to vote in the primary election next preceding that general election. A person not meeting the above requirements; a person who has been convicted of treason or felony, unless restored to civil rights; and a person under guardianship, or who is judged mentally disabled or impaired under procedures established by law, shall not be entitled or permitted to vote at any election in this State except as provided by the Legislature.

PLACE OF RESIDENCE. Sec. 2. For the purpose of voting, a person shall not be presumed to have gained residence in this State, nor to have lost such residence, solely by reason of his presence or absence in the service of the United States or while a student in any educational institution or while an inmate of any public institution, but this presumption may be rebutted by evidence that the person intended to establish such residence.

LEGISLATURE TO PROVIDE FOR THE EXERCISE OF SUFFRAGE. Sec. 3. The Legislature shall by law define residence for voting purposes, insure secrecy in voting and provide for absentee voting, the administration of elections and the nomination of candidates.

UNIFORM OATH AT ELECTIONS. Sec. 4. The Legislature shall provide for a uniform oath or affirmation to be administered at elections, and no person shall be compelled to take any other or different form of oath to entitle him to vote.

CIVIL PROCESS SUSPENDED ON ELECTION DAY. Sec. 5. During the day on which an election is held, no person shall be arrested by virtue of any civil process.

ELECTION BY BALLOTS. Sec. 6. All elections shall be by ballot, except for such town officers as may be directed by law to be otherwise chosen.

RIGHT TO HOLD OFFICE. Sec. 7. Every person who by the provisions of this article is entitled to vote at any election is eligible for any office elective by the people in the district wherein he has resided thirty days previous to the elction, except as otherwise provided in this Constitution or the Constitution and Law of the United States.*

OFFICIAL YEAR OF THE STATE. Sec. 8. The official year of the State of Minnesota shall commence on the first Monday of January in each year, and all terms of office terminate at that time. The general election shall be held on the first Tuesday after the first Monday in November. The general election shall be held biennially in each even-numbered year.

* The change proposed in this section was opposed by one member of the committee

D. NON-ADOPTED PROPOSALS

1. Representative John W. Johnson submitted a proposed constitutional amendment to provide for three-day elections in order to make it easier for everyone in the state to vote. Some of the objections raised: conflict with federal provision for a single day election, and expense and difficulty of administration. Perhaps current proposals to make election day a holiday would be a preferable way to raise the percentage able to vote, though it admittedly would not take care of the problem of bad weather.

2. The Minnesota Civil Liberties Union suggested elimination of the age requirement for holding office on the theory that this would enable the electorate to choose officials from any age group. The majority of the committee believes that it is reasonable and desirable to have the same qualification for holding office as for exercising the franchise, while the other member holds that the requirement for holding office should be even higher.

3. A suggestion was submitted requesting an amendment to former Section 2 to permit expunging of a felon's record after a prescribed number of years. It is the opinion of the committee that this is not a constitutional issue but something that can be handled by statute.

4. David Kennedy, Assistant Senate Counsel, raised the question of a possible conflict between Section 7 of Article VII and Section 1 of Article XI, which says that the Legislature may provide for "qualification for office" of officers of local government units. (Section 7 permits a citizen of 21 to hold any office for which he may vote, with the previously stated exceptions.) Does this refer

to rules for filing, oaths, etc., or does it permit the setting of substantive qualifications? The committee notes the potentiality for confusion and conflict but is satisfied with the language of Section 7 in the article before us.

III. ARTICLE I: BILL OF RIGHTS

A. THE BILL OF RIGHTS TODAY

It is fitting that in most state constitutions the Bill of Rights forms the first article because its guarantees to the citizenry are of such a fundamental nature. A Bill of Rights seeks to define those rights and liberties necessary for the development of a free and equal society necessary for the development of a free and equal society and to protect them from the power of government. The Bill of Rights in a state constitution operates as a limitation on state governments. The Bill of Rights in the federal constitution has also been in part applied to the states through decisions of the United States Supreme Court.

Even though much of the federal Bill of Rights has been applied to the states by its incorporation into the Fourteenth Amendment, there is still reason to have separate guarantees in state constitutions. Such guarantees cover rights not considered part of the federal Bill of Rights or federal rights not applicable to the states. Also, since U.S. constitutional history is always in the process of changing, there is no certainty that the rights applied to the states or the incorporation doctrine itself will remain the same. Moreover, provisions in a state constitution may be interpreted more liberally by a state court than federal constitutional language. In a federal system it is more appropriate for people "to look first to the state constitution and to the state courts for the vindication of personal liberties that may be challenged by state law or state action. They can have a reasonable expectation of such protection only if the state courts look upon the state Bill of Rights as a vital instrument for the defense and advancement of personal and political liberty."*

*Model State Constitution: National Municipal League, 6th edition, 1970, p.27.

Not only must a Bill of Rights be examined from the viewpoint of the needs of the people of an individual state, but it must also be considered in light of changes in our society. "Ideas concerning the fundamental character of a right may change."** People in different eras may need guaranteed protection for different rights, as shown by revision of and addition to Bills of Rights. Recent experience in other states shows a renewed interest in reexamining Bills of Rights, and since there was no Bill of Rights Committee during the work of the Minnesota Constitutional Commission of 1948, it appears to have been some time since such a study was made here. Governor Wendell Anderson's address to the Legislature requesting a constitutional study commission was entitled "Challenge of a New Day", and it was in this spirit that the committee sought to look at Minnesota's Bill of Rights.

The committee is generally satisfied with the Minnesota Bill of Rights, but believes desirable the deletion of obsolete provisions and the addition of several new sections. We are grateful to the many persons who shared their concerns with us in testimony, in writing, or by phone and also to our researcher, Joseph Hudson, who provided us with a study of the judicial interpretation and history of the article. Although we considered a host of issues, others which we find of interest (such as the right of privacy and problems of eavesdropping or wiretapping, Indian rights, etc.) were not raised before us. On the question of Section 16 and the prohibition against giving preference to any religious establishment, we deferred to the Education Committee, which held a hearing on the problem of state aid to religious schools and recommended no change.

** U. Brooke Graves, Problems in State Constitutional Revision, Public Administration Service, Chicago, 1960, p.164

In our recommendations we have attempted to incorporate the changes which we feel are most needed at the present time.

B. RECOMMENDED CHANGES

1. New Sections

RIGHTS OF THE MENTALLY DISABLED: No person shall be disenfranchised or deprived of his rights or restrained in his physical person on the basis of mental disability or impairment unless by the law or judgment of his peers.

Comment: Despite a better record than many states and the passage in 1967 of the Minnesota Hospitalization and Commitment Act, testimony to our committee and other sources of information indicate that in Minnesota the right of due process is not assured to those who are mentally disabled or impaired. A recent issue of Bench and Bar of Minnesota has an article on "Involuntary Commitment in Minnesota" which asserts that "despite substantive and procedural protections granted by the act, since the effective date of the act in 1968 many patients have not been afforded a full and fair commitment hearing. Reports by review boards at state hospitals, complaints filed by patients, studies undertaken by mental health associations regarding commitment practices and several lawsuits raising the issue of fair hearing and adequate representation, all lead to the conclusion that some present practices violate the mandate of the act." On August 11, 1972 a class action suit was filed in U.S.District Court in Minneapolis on behalf of state mental patients whose "provisional discharges" have been revoked without hearings; plaintiffs seek to have the 1967 act declared unconstitutional because it provides that such discharge may be revoked without notice or the opportunity to be heard.

There are those who say we need a new national attitude toward the mentally ill or retarded. The Washington Post in an editorial on March 15, 1972 hailed a recent federal court order in Alabama as a possible new beginning; in Wyatt v. Stickney a U.S. district judge ordered state officials to set up a human rights committee in the state hospital and to implement a multi-page set of standards drawn up by the plaintiffs and entitled "Minimum Constitutional Standards for Adequate Habilitation of the Mentally Retarded." Incorporated in these standards are rights brought up in our committee hearings: the right to due process, the right of self-determination or consent to treatment, the right to treatment, etc.

The State Department of Public Health proposed that language concerning the mentally disabled or impaired be added parenthetically to Section 2 of the Bill of Rights, which serves as Minnesota's civil due process guarantee, but the committee prefers to add a separate section, thereby emphasizing a constitutional guarantee for the rights of the mentally disabled.

INVIOLABILITY OF THE BODY: No person shall be compelled to undergo procedures involving surgery, convulsive electroshock, confinement of person or bodily movements, or any procedure causing irreversible physiological effects unless informed consent of the person or his guardian is given or unless appropriate procedures have been followed to obtain legal approval for their application in such instances.

Comment: This section is obviously closely allied with the previous one. While the committee considered combining them into one article,

it decided not to in order that this section could also offer protection against such things as forced sterilization.

EQUALITY OF RIGHTS: Neither the State nor any of its instrumentalities shall deny any person the equal protection of the law. The Legislature shall provide by law for protection of persons against discrimination in the provision of housing, education, employment, public accomodations, public facilities and services on account of race, color, creed, religion, sex, national or social origin, or physical or mental handicap.

Comment: Because of Minnesota's progressive tradition it surprises some people to discover that there is no general guarantee of equality of rights in the State Constitution. Many states do have such a section in their constitutions, and of course the United States Constitution has the Fourteenth Amendment guarantee of equal protection of the law amplified by a steadily increasing amount of case law. Minnesota does have a relatively good civil rights law, but it does not cover all of the categories needing protection. Furthermore, it is important to make clear that equality of rights is a fundamental and permanent policy in the State of Minnesota.

The committee quickly agreed that it should propose such an amendment and then struggled for a long time with various alternatives. While the committee wished to propose the strongest possible kind of guarantee for the rights of the people of this State, and especially for groups which have been discriminated against, it also wished to avoid adding legislative detail to the Constitution. The committee believes that the suggested language will be clear to the courts which must interpret it. And it is the committee's intent

that the Legislature implement the policy of the amendment through legislation directed also against private discrimination.

Most of the suggested classifications have already been singled out in the State's civil rights law for protection. Sex, however, is presently prohibited only in the area of employment, and the committee heard testimony from sixteen different persons (the largest number speaking to the committee on any given issue), giving witness to the varying forms of discrimination against women citizens of the state. These persons favored a separate equal rights amendment, but the majority of the committee preferred to combine the categories needing protection into one constitutional guarantee. The committee feels that another category needing special mention is social origin. We live in a time when inequities hidden within the whole web of our society are being seen with new awareness and sensitivity, and the committee believes that neither gender nor social origin should prevent a person from developing to his or her full potential.

The committee also recognizes that the problems of the physically and mentally handicapped have been overlooked for too long. Only the Illinois Constitution of 1970 has a provision against discrimination faced by the handicapped, although several states have such statutes, and an amendment to the Civil Rights Act of 1964 has been introduced in Congress which would cover federally assisted programs. The handicapped have many types of disabilities, but they all are apt to face difficulty in obtaining equal educational or employment opportunity. Public transportation may be completely unavailable, public buildings and public services inaccessible. They often face arbitrary regulations imposed by

governmental units and private businesses. The committee is not blind to some of the problems inherent in the guarantee of equal rights to handicapped citizens and taxpayers, but we are confident that the Legislature can provide for their resolution. Exceptions can be made as in the Illinois Constitution: "All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer."

RIGHT TO KNOW: Any organization, corporation, or government entity keeping a file on an individual shall notify that individual of the existence of the file and allow him or her to examine it. This provision shall be subject to such reasonable regulation as the Legislature may impose.

Comment: This proposal is a modification of an amendment submitted by Richard J. Runbeck and represents protection for the individual in an information-gathering age. As Mr. Runbeck points out, "Those who control the information which affects a person's life or livelihood control the future and destiny of that person." This amendment would assure the individual of the right to know about and examine information on himself as it appears in the files of public or private agencies and would give him the opportunity to challenge its accuracy.

It is not the intent of the committee to restrict the freedom of the press or to hinder criminal investigations conducted by governmental agencies. Such exemptions could be written into the regulations imposed by the Legislature.

The committee believes it would also be desirable for the Legislature to require that no organization, corporation or government

agency may disseminate information on record concerning an individual without recording the nature and substance of all disclosures, including the name of all persons, organizations, or agencies requesting the information.

RIGHT TO BEAR ARMS: Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.*

Comment: The federal right to bear arms has not been incorporated into the Fourteenth Amendment to apply to the states, but many state constitutions have a section guaranteeing the right to bear arms. In some it is worded in absolute terms while others provide that the Legislature may regulate this right. While a majority of the committee believes that the right to bear arms belongs in the Minnesota Bill of Rights, the committee does not wish to foreclose reasonable legislative measures for the control of crime and therefore prefers the above language, taken from the Illinois Constitution, to that of the proposal submitted by The Committee for Effective Crime Control.**

2. Other Changes

(a) IMPRISONMENT FOR DEBT: PROPERTY EXEMPTION, Section 12: Add the following sentence at the end of the section: "The Legislature may reasonably regulate the form and notice of such liens."

Comment: Since some feel that the mechanics lien law in Minnesota operates unfairly against property owners, Attorney General Warren

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* Opposed by one member of the committee.

** The right of a citizen of this state to acquire, possess, and use arms for recreation, for marksmanship training, or for defense of home, person, property, or the state shall not be abridges. No license or registration tax or fee shall ever be imposed on this right.

Spannaus suggests the addition of a requirement that the mechanic or materialman give notice to the owner at the time labor or materials are furnished. The intent of the committee is to allow the Legislature to do this.

(b) Recommended Deletions:

1) TREASON DEFINED, Section 9.

This appears to be obsolete today; levying war against the state or adhering to its enemies is a problem for the national government rather than for an individual state.

2) LANDS DECLARED ALLODIAL: LEASES, WHEN VOID, Section 15.

Obsolete; also recommended for deletion by 1948 Constitutional Commission.

3) NO LICENSE TO PEDDLE, Section 18.

Structure and Form Committee recommends moving to Article XIII.

(c) Recommended Addition:

1) The Legislature shall not abridge the right of the people to assemble and to petition the government for redress of grievances.

Comment: This addition was recommended for Section 2 by the 1948 Constitutional Committee. The Bill of Rights Committee considers the right of assembly to be an important one and notes that it is found in most state constitutions. The committee recommends that it be added to the Bill of Rights either as a separate section or combined with Section 3.

C. NON-ADOPTED PROPOSALS:

1. An equal rights amendment similar to the federal one now before the states for ratification was favored by many people testifying before the committee, in fact receiving more support than any other proposal made. (An alternative was also submitted which would cover private discrimination as well.) The majority of the committee preferred to include sex with the other categories to be protected in the proposed new section guaranteeing the equality of rights. One member supported a separate equal rights amendment because of the fact that courts might otherwise apply the traditional equal protection "rational basis" test for discrimination based on sex which would provide insufficient protection.

2. A proposal was made by Jack Baker and Dennis Hilger to amend Section 16 to include "jus societatis congeneratae" at the end of the first sentence for the purpose of protecting the individual's right to love. Mr. Baker subsequently proposed the alternative of including "societatis congeneratae" in a general equal protection section. The majority of the committee opposed the proposals on the ground that it is not possible to include every group in the constitution; one member would support constitutional protection for non-heterosexuals but was opposed to the Latin language offered.

3. A great deal of interest was evidenced in prisoners' rights. Inmates at St. Cloud and Stillwater expressed their interest in testifying to the committee but were unable to attend a hearing; the committee was sent a copy of "The Pillar" (published by St. Cloud inmates) for March 2, 1972, containing a prisoners' bill of rights which is being included in the permanent record submitted with this

report. Chief among those testifying before the committee on this subject were David Fogel, Commissioner for the Department of Corrections, and Thomas Murton of the Murton Foundation for Criminal Justice, Inc., and the University of Minnesota. Mr. Fogel believes that no constitutional change is necessary to safeguard these rights which can be guaranteed by administrative and legislative action although he would favor an amendment allowing felons to vote by absentee ballots. Mr. Murton feels that while 95% of what he advocates could be accomplished without amending the Constitution (prisoners' right to counsel at disciplinary hearings, freedom from censorship, end to indeterminate sentencing, right to fair compensation for work, etc.), there remains a need for a guarantee of basic human rights for prisoners; he pointed to the United Nations 1955 Bill of Rights for prisoners as a model. No proposed language for a section in the Minnesota Constitution was presented to the committee, which felt that the kinds of detailed concerns brought to our attention were matters for the Legislature.

4. Finally, a number of proposals made to the committee were not discussed at length because the committee felt they were not constitutional issues, or because too little information was available as background, or because there was little apparent public interest. These include:

a. creation of a constitutional office of ombudsman
b. abortion (pro and con)
c. Indian treaty rights as they relate to inter-racial marriages
d. rights of juveniles
e. the right to adequate housing, to available and adequate health care, to the benefits of higher education and to legal assistance without regard to the individual's ability to pay

IV. SUMMARY OF RECOMMENDATIONS

Presented here in capsule form are the main recommendations of the Bill of Rights Committee to the Minnesota Constitutional Study Commission; for clarification, amplification and the reasoning of the committee the reader is referred to Sections II and III of the committee report.

ARTICLE VII. ELECTIVE FRANCHISE

The committee believes that a number of changes are needed in this article because of obsolete, unclear, and archaic provisions. Because other changes also seem desirable we recommend a revision of the entire article. The complete wording of the proposed article appears on page 9 of the report, but the major changes would:

1. lower the voting age from 19 to 18 (to comply with U.S. Constitution)
2. reduce state residency requirement for voting from 6 months to 30 days
3. allow those who will be 18 in time to vote in a general election to also vote in the preceding primary election
4. allow the Legislature to make provision for the restoration of voting rights to felons or the mentally disabled or impaired
5. allow the Legislature to provide for the administration of elections (to replace constitutional provision for state canvassing board)
6. lower age for holding office from 21 to 18 *

ARTICLE I. BILL OF RIGHTS

The committee proposes the deletion of Sections 9 and 15, the removal of Section 18 to Article XIII, and the following additions to the Minnesota Bill of Rights:

1. Rights of the mentally disabled: No person shall be disenfranchised or deprived of his rights or restrained in his physical person on the basis of mental disability or impairment unless by the law of the land or judgment of his peers.

* one member dissenting

2. Inviolability of the body: No person shall be compelled to undergo procedures involving surgery, convulsive electroshock, confinement of person or bodily movements, or any procedure causing irresible physiological effects unless informed consent of the person or his guardian is given or unless appropriate procedures have been followed to obtain legal approval for their application in such instances.

3. Equality of Rights: Neither the State nor any of its instrumentalities shall deny any person the equal protection of the law. The Legislature shall provide by law for the protection of persons against discrimination in the provision of housing, education, employment, public accomodations, public facilities and services on account of race, color, creed, religion, sex, national or social origin, or physical or mental handicap.

4. Right to know: Any organization, corporation or government entity keeping a file on an individual shall notify that individual of the existence of the file and allow him or her to examine it. This provision shall be subject to such reasonable regulation as the Legislature may impose.

5. Right to bear arms: Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.*

6. Addition to the end of Section 12: "The Legislature may reasonably regulate the form and notice of such liens."

7. Guarantee of the right of assembly as recommended by the 1948 Constitutional Commission.

* one member dissenting

V. APPENDIX

A. Testimony Before the Committee:

1. Hearing in St. Paul on April 6, 1972*

Thomas Murton, Murton Foundation for Criminal Justice, Inc. and the University of Minnesota
Anne Truax, Minnesota Women's Center and Chairman of the Twin Cities Women's Action Coalition
Deonne Parker and George Vtephenson, Minnesota Civil Liberties Union
David Ziegenhagen, Mental Health Association of Minnesota
Lu Stocker, State Republican Chairwoman
Kathy Olson, President of Twin Cities chapter of the National Organization of Women
Jackie Moren, University YWCA
Sherry Lurk, Emma Willard Task Force on Education
Cynthia Attwood, University of Minnesota Law School
Janet Dietrich, Minnesota Women's Political Caucus
Helene Borg, State League of Human Rights Commissions
Mrs. Joseph Brink, St. Joseph
Congressman Donald Fraser
Commissioner David Fogel, Department of Corrections
Miriam Karlins, Director of Mental Health Education in the Minnesota Department of Public Welfare
Dr. Phyllis Kahn, Minnesota Women's Political Caucus
Betty Howard, State Department of Human Rights
Ellen Dresselhuis, President of Women's Equity Action League
Dr. Eugene Eidenberg, University of Minnesota Equal Opportunities Compliance Officer
Delores Orey, Ramsey County Legal Assistance
Martha Kahn, Minnesota Civil Liberties Union
E. Floyd, Minneapolis

2. Hearing in Moorhead on May 4, 1972

David Strauss, student body president, Moorhead State College
Bernice Arett, Minnesota Women's Political Caucus

3. Hearing in St. Paul on June 21, 1972

John Martin and Jon Willand, Committee for Effective Crime Control
Byron Starnes, Assistant Attorney General
Richard W. Runbeck, University of Minnesota Law School
Franklin Knoll, Executive Director of the Minneapolis Urban Coalition Action Council
R. Michael Wetherbee, Legal Counsel for the Minnesota Civil Liberties Union
Charles Van Heuveln, Handi-Registration, United Cerebral Palsy
Peter Benzian, Minnesota Public Interest Research Group
Rev. Robert Lovering, Director of Social Services for United Cerebral Palsy of Minneapolis
Lorraine Arvidson, Secretary of United Blind of Minnesota, Inc.

*Since initial public response indicated a special interest in the rights of women and of persons in state institutions, the first hearing was scheduled to focus on these issues.

Robert Lindstrom, Epilepsy League of Minnesota
Rev. Barbara Andrews, Assistant Pastor of Edina Community Lutheran Church
Gene O'Neil, Executive Director of United Cerebral Palsy of Greater St. Paul, Ind.
John DuRand, Executive Director of Occupational Training Center, Inc.
Jack Baker, President of the Minnesota Student Association, and Dennis Hilger
Alice Cowley, St. Paul
Darla St. Martin, Women for Universal Human Rights
Mrs. Joseph Brink, St. Joseph
Thomas Mooney, Minnesota Citizens Concerned for Life

B. Letters and Written Statements or Memoranda Submitted to Committee

Representative John W. Johnson
Secretary of State Arlen F. Erdahl
William Merlin of Merlin, Starrs and Kiefer
John Milton, Ramsey County Commissioner
Attorney General Warren Spannaus
Committee for Effective Crime Control
Morris Hursh, Department of Public Welfare
Professor Joyce A. Hughes, University of Minnesota Law School (also a member of the Commission)
Cynthia Attwood, University of Minnesota Law School
Congressman Donald Fraser
Milton A. Kludt, Judge in Norman County
L. W. Binger, Chairman of the Governor's Commission on Employment of Handicapped Persons
Mark C. Erspamer
Minnesota Home Economics Association
University YWCA
District Judge John B. Friedrich
LeAnne M. Nelson
Joseph Bright, Revisor of Statutes
Earl Zaiser, St. Paul

C. Internal Research - Staff Reports

"The Minnesota Bill of Rights: An Overview," Joseph P. Hudson
Memorandum on Durational Residency Requirements, Jon Schroeder
Memorandum on removal of state canvassing board from the Constitution, Jon Schroeder

D. Those Invited to Testify

American Indian Movement, Minneapolis
American Indian Movement, St. Paul
Mrs. Joseph Brink
John Broady
Dr. Frank Brown, State Reformatory
Business and Professional Women, St. Paul
Business and Professional Women, Minneapolis
Minnesota Home Economics Association
Shakopee Medwakantan Sioux Community

Urban Coalition of Minneapolis
Ramsey County Bar Association
National Organization for Women
League of Minnesota Human Rights
Minneapolis Urban League
Grand Portage Reservation Business Committee
Episcopal Church Women
Minnesota Chippewa Tribe
Upper Sioux Indian Community
Human Rights Commission
Red Lake Bank of Chippewa Indians
Citizens League
Lower Sioux Indian Community in Minnesota
Minnesota Concerned Citizens for Life
University of Minnesota Womens Liberation
St. Paul Urban League
Minnesota Civil Liberties Union
Minnesota Political Caucus
National Association for Advancement of Colored People
Dave Olmscheid
Prairie Island Indian Community
League of Women Voters
Minnesota Bar Association
Hennepin County Bar Association
Hennepin County Mental Health
Fond Du Lac Reservation Business Committee
Minnesota Council of Churches
Uppermidwest Indian Center
Minnesota Public Interest Research Group
Urban Coalition of St. Paul
Womens Equity Action League
Womens Political Caucus
Young Women's Christian Association
Zonta Club of Minneapolis
Committee for Effective Crime Control
Indian Affairs Commission
Human Relations Commissioner
Rep. John Johnson

EDUCATION AND FINANCE COMMITTEES HEARING
Room 118 State Capitol - March 17, 1972

PRESENT: Rep. O. J. Heinitz, Rep. Richard Fitzsimons, Mr. Orville Evenson, Mr. Duane Scribner, Professor Fred Morrison, Mrs. Betty Rosas, Sec.

The meeting was called to order at 10:05 AM by Rep. Heinitz, Chairman of the Education Committee. He stated the subject matter would cover general funding of education, and dedicated funds, Article VIII, Sec. 1, 2, 4, 6, and 7. He stated higher education and aid to non-public schools would be considered at later meetings.

Professor Fred Morrison, Research Director for the Commission explained the discussion should pertain to funding for public education, whether at state leve, school district level or another level, and whether or not it should be written into the Constitution and trust funds, Sec. 4, supplemented by Sections 6 and 7.

The following persons appeared giving testimony:

Commissioner Howard Casmy, Department of Education, spoke on the permanent school fund explaining this helps to pay for equalization of education in Minnesota. He recommended retaining this dedicated fund provision. The interest from this fund of close to 300 million dollars is 13 million dollars and if not in Constitution would require the Legislature to request.

Mrs. Mary Jo Richardson, State Board of Education Member, referring to Art.VIII,Sec.1, stated equal opportunities for all should be general mandate which would mean more for handicapped, for instance. She stated Sec.2 is obsolete.

Mr. Robert E. Blixt, Executive Secretary of State Investment Board, recommends minimal changes best for whole Constitution, reluctant to suggest specific modifications, some obsolete language could be removed. He stated he was instrumental in writing the Trust Fund Amendment in 1962. He recommended the following:

Art.IV,Sec.32(b) Internal Improvement Land Fund not necessary as a special trust fund.

Art.X,Sec.11, unnecessary for State Treasurer to publish every financial transaction.

Modification or elimination of Permanent School Fund amendment but not important enough for a Const.Amend. (could be thru deletion of obsolete language)

Art.IX, Sec.6 Subd.4, favors 20-year maturity limit on state debt. This would be beneficial in planning issuance of state bonds.

Art.VIII,Sec.4, no changes necessary. If deemed appropriate to make changes to achieve greater income and appreciation potential suggests an increase in the stock limit from 20% to 50% and the bond limit from 40% to 70%. However, present provisions very workable.

Art.VIII,Sec.5, integral part of financial provisions applicable to permanent funds. Sec. 6 and 7 may be unnecessary, could be handled thru Statutes. Land Exchange Commission has caused many land transactions in a manner seldom criticized.

Dedication of Trunk Highway Fund, County State-Aid Highway Fund and Municipal State-Aid Street Fund.

Mr. C. B. Buckman, Deputy Commissioner of Department of Natural Resources, Presented information concerning revenue derived from School and Swamp Land Funds, University Lands, and Salt Spring Lands. He stated the trust fund lands provide long range public benefits such as recreation, hunting, control of erosion, water retention and ascetic values. Specific recommendations will be presented later from a study committee.

Dr. Hugh Holloway, Supt. of School District #191, Burnsville, stated the Constitution makes the State of Minnesota totally responsible for public schools of the state, not only financing the maintenance and operation but also the construction program. He stated the levy of taxes for a general purpose must be uniform on all classes of subjects throughout the state and should not be related to school district boundaries.

He believes there is no constitutional bar to local operation of school districts within the state under the so-called local control concept so long as the state system is "general and uniform" and "thorough and efficient". He stated the present system is not general and uniform, not thorough and efficient, not constitutional in this state. He recommended leaving the Constitution as it is and next legislative session give serious consideration to bringing present legislation closer to the Constitution.

Mr. Roy Schulz, Minnesota Real Estate Taxpayers Association, Regarding Sec. 1 and 2 he stated the present method of financing education falls far short of that goal. He cited disparities between rich and poor districts, 14 largest districts spent $655 per student at 120 mill rate, 14 poorest averaged $601 per pupil and had to levy 251 mills.

After Sec. 1 he recommended the following addition: "They shall finance all general maintenance expenditures for elementary and secondary education in our public schools."

The Taxpayers Association strongly believes all education and welfare costs should be borne by the state and federal government.

He recommended retaining Sections 4, 6 and 7. He suggested Section 4 be amended to encourage county and municipal governments in our state to borrow from this fund, counties with population up to 100,000, in order to encourage business and industry growth, these funds to be used for installation of roads, sewer and water, and revamping of topography suitable for industrial expansion. He suggested not over 50% of trust fund be used for such purposes and a limit for each county.

W. A. Wettergren, Executive Secretary of the Minnesota School Boards Association, stated he reviewed the Constitution provisions with the Board of Directors and Legislative committee. The Association has very little to recommend in line of change.

The meeting adjourned at 1:30 P.M.

EDUCATION COMMITTEE

Rep. O. J. Heinitz, Chrmn.
Mr. Orville Evenson
Mr. Duane Scribner

FINANCE COMMITTEE

Rep. Richard Fitzsimons, Chrmn.
Senator Jack Davies
Rep. Ernest Lindstrom
Mr. Duane Scribner
Senator Robert Tennessen

On May 4, 1972 nine Study Committees of the Minnesota Constitutional Study Commission held hearings throughout the day at Moorhead, Minnesota. The eighth Commission meeting was held at a noon luncheon at the Ramada Inn. The following members were present:

Chairman Elmer L. Andersen
Prof. Carl A. Auerbach
Sen. Robert J. Brown
Sen. Jack Davies
Rep. Richard Fitzsimons
Rep. O. J. Heinitz
Mrs. Betty Kane
Rep. L. J. Lee
Rep. Ernest Lindstrom
Mrs. Diana Murphy
Judge James C. Otis
Rep. Joseph Prifrel
Hon. Karl F. Rolvaag
Mrs. Joyce Hughes Smith
Mr. Duane Scribner
Sen. Robert Tennessen
Sen. Stanley Thorup
Sen. Kenneth Wolfe

Mr. John Paulson, Editor of the Fargo-Moorhead Forum and Delegate to the North Dakota Constitutional Convention explained some of the recommendations included in the new constitution, his analysis of the defeat by the voters, and future plans for constitutional change.

In the absence of Chairman Andersen who was addressing the Moorhead Kiwanis Club luncheon, Vice-Chairman Karl Rolvaag called the meeting to order at 1:20 P.M. The minutes of the April Commission meeting were approved as distributed.

In discussing the June Commission meeting schedule, Mrs. Betty Kane recommended inviting members of the 1948 Constitutional Commission to come and make statements. A schedule of Commission meetings for July and August will be determined at the June meeting with the goal of accomplishing the Commission work by September 15.

Chairman Andersen arrived and called on Mr. Duane Scribner to present a summary of the Final Report Committee's recommendations for the basic structure of the Final Report.

Senator Wolfe announced a meeting of the Intergovernmental Relations and Local Government Committee in Rochester June 13, in conjunction with the League of Municipalities Convention.

Senator Davies stated the Structure and Form Committee will be submitting its report in the near future and requested each member to read it individually and make recommendations in the margins.

The Commission meeting was adjourned at 2 P.M. at which time two Study Committees met.

Chairman

MINUTES OF THE EDUCATION COMMITTEE

OF THE CONSTITUTIONAL STUDY COMMISSION

HELD IN MOORHEAD, MINNESOTA, MAY 4, 1972

Present:

Representative O. J. Heinitz
Senator Jack Davies
Representative Ernest A. Lindstrom
Dr. Malcolm Moos
Mr. James V. Brinkerhoff
Mr. Richard C. Hawk
Mr. Duane Scribner
Professor Fred Morrison

Mr. Heinitz opened the meeting, stating the topics for the meeting were: the structure of education: money in the school fund: and Article VIII, Section 3, the University of Minnesota.

Professor Morrison outlined the issues before the committee· reviewed the last meeting: issues being organization of higher education -- 1) How to organize (Wisconsin one system)-- unification should be addressed: 2) Special status of the University (Article VIII, Section 3).

Representative Lindstrom addressed the meeting -- stated his remarks were not meant to take firm position one way or the other, rather wanted to raise some questions. Mr. Lindstrom noted that Chapter 3 of Laws 1851 sets the salaries by legislative action. Section 20 therein says they may be changed. Constitution, Article VIII, Sec. 3 confirms location of University and its rights, etc. Mr. Lindstrom noted the importance of the Chase case of 1928. Mr. Lindstrom said that as he reads it the legislature cannot regulate the University, but "what about salaries, etc." "Should the University be kept autonomous, fiscal vs. educational. There are problems with the State College System, the Jr. College System -- problems with size of salaries, pensions compared with other colleges. There are problems with investments. Can these be solved other than by changing the constitution. Would it not be well to delineate where we are in regard to these problems. Seems to be a large diversity of opinion as to how to resolve these problems."

Dr. Mitau addressed his remarks to the degree of consolidation that might be advisable. "Higher educational governing is enormously complex. The varying type of institutions seem to preclude a tight governing organization. Governing has been through compromise and consultation. Complexities are becoming greater, not smaller. We are faced with striking a balance between the various needs of the campuses and the demand of accountability to the people of the state. Simplistic answers are not helpful.

There is a need for coordination and accountability, but not dictation. We need a coordinating commitment. . . .clarification of coordinating, etc., responsibilities. A new attitude of excellence, coordination and cooperation. Our present approach is preferable to a freezing of present curriculum experiemnts. There are two areas of needs from the legislature -- budgetary help and regulation."

Dr. Mitau cited the lack of authoritative data within and between systems; a need for clarification and overlapping positions; the uncertainty of proper models of representation by students, faculty, etc.

He said that bridges must be built to help improve the system as it is now. There must be a mutual trust in the different concerns.

Questions:

Prepresentative Heinitz -- "Do you mean "all" areas?"

Dr. Mitau -- "Yes."

Mr. Duane Scribner -- "Are you concerned with constitutional change?"

Dr. Mitau -- "No."

Question: "By review of budgets by coordinating committee you do not preclude the University of Minnesota from going directly to the Legislature?"

Dr. Mitau -- "Any component may go directly to the Legislature."

Senator Davies -- "What is the import of Article 8, Section 3, in your view?"

Dr. Mitau -- ". . . defer to your judgment -- centralization is my concern."

Professor Morrison -- "Do you want the college system written into the Constitution?"

Dr. Mitau -- "There are some advantages, however such a broadening is not very likely so then I ask what can be done in achieving the coordination -- statutory change."

Mr. Richard Hawk, Higher Education Coordinating Commission -- ". . . Not hampered by the Constitution as it is now. How do we improve -- it should provide a better system and also use of private institution. Presently Article 8, Section 3 is inadequate to our situation. Maybe it should have a provision for establishment of other higher institutions and how they are to be governed, and a coordinating board and long range planning, etc. It should only speak in general terms." . . ."We must be willing to use the private colleges as necessary. They are extremely similar and there should be no duplication by state schools.

We should seek closer coordination with these private schools. Such use should be clarified and allowed in the Constitution."

Senator Davies: "How do your comments change the Constitution as it is now?"

Mr. Hawk -- There are no real problems with the present Constitution."

Representative Heinitz -- "Are you suggesting that we also are to fund the higher education?"

Mr. Hawk -- "I'm not suggesting that, no."

Rep. Heinitz. -- "How do you feel about the immunity of the University of Minnesota?"

Mr. Hawk -- "We've had no problems with this language."

Dr. Moos raised questions regarding the general organization of higher education -- is opposed to a merger of the University with the rest of the higher education system. Dr. Moos' statement received (in file)

Questions:

Duane Scribner --". . . differences in salaries and pensions -- Are there differences in these in states that have constitutional autonomy for "the" University and other higher educational institutions?"

Dr. Moos -- "This varies."

Mr. Hawk -- "Varies from state to state."

Dr. Moos -- "Montana is now seeking constitutional autonomy for its University."

Sen. Davies -- "What is really the real life separate autonomy? What amount of funds?"

Mr. Brinkerhoff -- "$2,000,000."

Sen. Davies -- "Don't we (Legislature) have control of our appropriations because of this constitutional authority?"

Dr. Moos -- "Of course you do have control."

Sen. Davies -- "Then . . . just symbolic."

Dr. Moos -- "Symbolic is very important."

Sen. Davies -- "Can we condition funds on University doing certain things?"

Dr. Moos -- "I doubt that that would be upheld."

Professor Morrision -- "Should the University fund for investment be given

to the State Board of Investment Committee and proceeds be given to University. ---Taxation of investment property?"

Mr. Brinkerhoff -- "Will forward correspondence regarding this.

MINNESOTA CONSTITUTIONAL STUDY COMMISSION
G-19E Administration Building / St. Paul, Minnesota 55155
(612) 296-6683

The contents of this Report are preliminary only, not the final recommendations of the Commission. Therefore, do not make any use of the Report without permission.

REPORT OF THE

EDUCATION COMMITTEE

TO THE

CONSTITUTIONAL STUDY COMMISSION

ON

JULY 20, 1972

* * * *

REPRESENTATIVE O. J. HEINITZ, CHAIRMAN
MR. DUANE C. SCRIBNER
MR. ORVILLE J. EVENSON

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REPORT OF THE EDUCATION COMMITTEE.

CHAPTER I.
INTRODUCTION

Mr. Chairman:

The Education Committee has considered provisions of the Minnesota Constitution relating to Education. These provisions are primarily contained in Article VIII of the Constitution.[1]

The Committee has also studied other provisions of the Constitution relating to education, particularly Article I, Section 16.

This Committee consisted of Orville Evenson, O. J. Heinitz and Duane Scribner. Representative Heinitz served as Chairman. The Committee has had the assistance of a staff of three persons from the University of Minnesota Law School, Jon Hammarberg, Joseph Hudson, and Fred Morrison.

The Committee initiated its study by contacting individuals and groups who have an interest in educational matters. This included those who over the years, have been involved in educational issues before the Legislature and others who asked to be added to our mailing list. The Committee asked these individuals and groups to identify problem areas in the Minnesota Constitution which require consideration. The Committee staff also did research in the area of education law to identify other issues.

The Committee then concentrated on three major problem areas for further study. The problem areas are:

(1) Aid to non-public schools. (Chapter II of this report.

(2) Equalization of public school finance; this problem is sometimes referred to as the state financing of the full costs of elementary and secondary education. (Chapter III of this report).

(3) The organization of higher education in the state, including the question of the constitutional status of the University of Minnesota. (Chapter IV of this report).

In addition, the Committee gave summary attention to two other topics:

(1) The organization of the State Department of Education, and,

(2) The restrictions on the investment and use of the Permanent School Fund and the Permanent University Fund. These topics are discussed in Chapter V of this report.

In making our recommendations, the Committee has constantly kept in mind the limitation of our task. We are discussing problems with the state Constitution. We view the Constitution as establishing a broad framwork for governmental power, within which the designated authorities may establish and alter particular policies. Hence we have approached our task with the presumption that the Constitution should be a simple document, delegating authority and responsibilities, but should not contain specific instructions on matters of

detail. These may better be worked out, from time to time, by the Legislature and by other public agencies to which responsibility for public education may be entrusted.

As our findings indicate, we believe that the present Constitution has served admirably in this respect. It has delegated power and responsibility for public education, without impeding the process of change which inevitably will take place. It has left the Legislature free to deal with changes in educational patterns and problems, as they arise.

Furthermore, we have looked at our task as one of identifying problem areas and suggesting necessary change. This change might take the form of addition, amendment, or deletion. We have not drafted an "ideal" education article, but have worded from the structure of the existing Constitution.

Public Hearings.

In the course of our deliberations, we have held three public hearings, covering four of the topics discussed. The first public hearing was held March 17, 1972, in St. Paul. It was a joint meeting with the Finance Committee. The Committee heard testimony regardwng Article VIII, Sections 1, 2 (first paragraph), and 4. Our conclusions on the basis of this testimony are set forth in Chapters III and V of this report.

The second public hearing was held on May 4, 1972, in Moorhead. It centered on problems of higher education in the state. The Constitutional provisions involved are Sections 3 and 5 of Article VIII. The Committee also heard testimony

from representatives of institutions which are not specifically mentioned in the Constitution. The recommendations and conclusions of the Committee are set forth in chapters IV (organization of higher education) and V (finance) of this report.

The third and final public hearing was held on June 5, in Mankato. It centered on the question of financial aid to non-public schools. Two constitutional provisions are directly involved here. The second paragraph of Article VIII, Section 2 deals with this question. Article 1, Section 16, also sets forth similar language. Our recommendations on this issue are included in Chapter II of this Report.

The Committee has received generous cooperation from government officials and from members of the public in its inquiries. We have been provided with financial and statistical data, memoranda and opinions. The Committee is most grateful for this assistance.

CHAPTER II

AID TO NON-PUBLIC SCHOOLS

The Issue.

Do the provisions of the Minnesota Constitution which prohibit aid to sectarian schools require amendment or change? The Minnesota Constitution contains two such provisions, one in the Bill of Rights and one in the Education Article. The issue which the Commission must face is whether these two sections prescribe the proper relationship between church and state in Minnesota.

Over the past decade, the public treasury has provided some support or services to children in non-public schools and to their parents. Some of this support has been in the form of specific services, like transportation. Other support has been in the form of payments or tax rebates to the parents of children in such schools in the amount of tuition payments.

Policy decisions which the people of Minnesota may reach in this regard are, of course, subject to the restrictions of the First and Fourteenth Amendments to the United States Constitution, respecting the establishment of religion.

The Constitutional Provisions

Two provisions of the Minnesota Constitution deal directly with this question. The first is in the Bill of Rights, Article I, Section 16. It was part of the original 1857 Constitution of the state. It provides:

Freedom of conscience; no preference to be given to any religious establishment or form of worship. Sec.16. The enumeration of rights in this consitution shall not be construed to deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State, nor shall any money be drawn from the treasury for the benefit of any religious societies, or religious or theological seminaries.

The other provision is the second paragraph of Article VIII, Section 2. It was added to the Constitution in 1877. It is a form of the so-called "Blaine Amendment," which was added to many state constitutions at about that time. The section provides:

Public schools in each township to be established. Sec.2. The legislature shall make such provisions, by taxation or otherwise, as, with the income arising from the school fund, will secure a thorough and efficient system of public schools in each township in the State.

Prohibition as to aiding sectarian school. But in no case shall the moneys derived as aforesaid, or any portion thereof, or any public moneys or property, be appropriated or used for the support of schools wherein the distinctive doctrines, creeds of tenets of any particular Christian or other religious sect are promulgated or taught.

Two other Minnesota constitutional provisions have bearing on the sectarian aid and establishment question. Article IV, Section 33 deals with special legislation and provides in part that the legislature cannot enact local or special laws "authorizing public taxation for a private purpose". The other provision involved in the sectarian aid/establishment issue is

Article IX, Section 1, requiring that "taxes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes". Minnesota cases indicate that the public nature of an aid is not destroyed by incidental aid to private institutions, if the primary purpose of the legislation was to provide public aid, although these cases do not directly deal with the problem of aid to sectarian education.[2]

These Minnesota Constitutional provisions must be read in the light of the United States Constitution. The First Amendment provides, in part:

> Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof,...

The Fourteenth Amendment has made these same restrictions applicable to the states. Consequently, whatever provision the Minnesota Constitution contains, government in Minnesota may not violate the protections of the United States Constitution.

While case law interpreting the limits of the Minnesota provision has been sparse, judicial decisions interpreting the application of the First Amendment to the states has been plentiful.

The most recent and significant state case is Americans United v. Independent School District 622.[3] It was a challenge brought against the implementation of a state law requiring certain school districts to provide bus transportation for students of non-public schools within their territory. The law was supported on the theory that it benefitted the children involved, not the parochial schools, and on the basis that it

was not aid to education. While the Minnesota Supreme Court affirmed the constitutionality of the particular statute in question, Minnesota Statutes Section 123.76, the state court warned that the particular statute went to the brink of constitutional permissibility. The opinion states:

> "In holding that L. 1969, c.570, authorizing public transportation of parochial school students, does not violate Minn.Const.Art.8,§2, prohibiting the use of public money for the support of parochial schools, we do so with the conviction that this legislation brings us to the brink of inconstitutionality."

In deciding the case, the Minnesota Supreme Court appeared to hold that the Minnesota Constitution's provisions on the question of state aid to non-public schools are more stringent than those of the United States Constitution.

The United States Supreme Court has long sustained the constitutionality of free public bus transportation for children attending parochial schools.[5] Everson was sustained as Americans United seemingly was, because the statute had a general safety or welfare public purpose (safety of school children) and the "aid", if any, was for the benefit of the child, not the school.

While Minnesota court seemingly relied on the traditional basis that the law provided a benefit to the child, not the parochial school, to sustain Minnesota's public transportation for parochial students provision; other states, interpreting their constitutions more stringently than the federal provision have rejected Everson on the theories,

1-that the sectarian institutions are relieved of the expense of bringing the child to school;

2-that transportation programs are more easily identifiable as an element essential to the parochial schools than, for

example, police or fire protection;

3-that the costs incurred by the state are not more than would exist if these students were attending public schools;

4-that the legislation is merely a legitimate exercise of the police power.

For example, the Wisconsin Supreme Court accepted the first three arguments in dealing with a similar Wisconsin constitutional provision in a case involving public transportation for parochial students.[6]

After the decision in Americans United the Minnesota Legislature provided a personal income tax credit for parents who send their children to a non-public school. (See Minn. Statutes 290.086.) A non-public school is a non-profit elementary or secondary school, other than a public school, located in Minnesota, which complies with the Civil Rights Act of 1964, and fulfills the requirements of the state's compulsory attendance laws.

Two limitations reduce the permissible credit. The maximum amount of credit per pupil unit may not exceed $100 during 1971 and 1972. In subsequent years, this amount may be increased by the same percentage that state aid to public schools is increased, but the amount of the credit may never exceed the actual cost to the parents of sending a child to a non-public school. The ratio of the tax credit to the cost for education in non-religious subjects for each non-public

school pupil also cannot exceed the ratio of the average state foundation aid per pupil unit for public schools to the average total maintenance cost per pupil unit in the public schools. In brief, non-public schools can't get more aid than public schools.

The constitutionality of this program was challenged in a suit in Ramsey County District Court. On July 5, the District Court upheld the plan, holding that there was no prohibited aid to sectarian education, since payments are made to the parents, not to the schools. The plaintiffs have indicated that they will appeal the decision.

Federal constitutional standards.

Whatever provision is contained in the Minnesota Constitution, state relationships with churches and religious schools will be restricted by federal constitutional standards. The applicable provisions of the First Amendment have been extended to the state governments, as well.

In a 1971 decision, Chief Justice Burger outlined the criteria which the Supreme Court has used. He stated:

> Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion,... finally, the statute must not foster "an excessive government entanglement with religion. [7]

All of these criteria present difficult problems of interpretation. What is a"secular legislative purpose?"

The value of this criterion is that it gives deference to the findings and conclusions of the legislature.[8] The problem, of course, is that almost any legislation or program can or does have secular purposes, and any determination of whether this is unconstitutional is necessarily highly subjective.

As regards the second criterion, "primary effect", many of the same problems of specific application exist. One authority has suggested it means "first order, fundamental effect," while another suggests that the measure should be that the church may not receive a greater share of the benefits than the state [9] and yet another suggests that "primary" should be considered as any independent secular effect, regardless of possible additional religious effects.[10]

In the application of these standards, one approach is the "child benefit theory". This theory would permit a state to assist the child or his parent, but not the parochial schools themselves.

The third criterion was set out in a 1970 case where the Supreme Court indicated it was utilizing a new criterion,[11] whether the challenged Statute could result in an "excessive government entanglement with religion."

The most recent Supreme Court case involved a Pennsylvania statute granting financial support to non-public elementary and secondary schools through reimbursement for teachers' salaries, textbooks and instructional materials in specific secular courses; and a Rhode Island statute authorizing payment to non-public elementary school instructors of a supplement equal to 15 per

cent of their annual salary.[12] Both statutes were ruled unconstitutional. On the same day the Supreme Court upheld provisions of the Higher Education Facilities Act (20 USC. § 701-58) (1963) permitting federal construction grants for the building of non-public college and university facilities.[13]

Why the different results in Lemon and Tilton? The criteria outlined do not appear to compel the differing decision. Excessive entanglement and the need for financial surveillance are arguably involved in building construction, as in teachers' salaries, textbooks (approved numerous times before Lemon) and instructional materials. The courts may be distinguishing between higher education on the one hand, and elementary and secondary schools, on the other. Or they may be distinguishing "hardware" buildings, busses, books, from"software," personnel and more intimate involvement in parochial education. Whatever the federal standard, it will provide a minimum protection for the seperation of church and state in Minnesota.

Other state constitutions.

Many other state constitutions contain provisions which are similar to that in the Minnesota Constitution. The Wisconsin provision has been cited in a footnote above. A summary review of constitutions of other states indicates that at least half have provisions providing some detailed restriction on the use of public funds to support parochial schools.[14]

The Model State Constitution restricts itself to a simple paraphrase of the United States Constituion: "No law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof,..." [15]

The Committee does not believe that the provisions of other state constitutions is particularly important in this field, because of the different historical developments in other parts of the nation.

Present positions.

The Education Committee cannot expound the meaning of the constitutional provisions in detail. That is the work of the courts. Our purpose was to see if there was a need for constitutional change. If so, we were instructed to recommend direction for that change and its content.

We conducted a public hearing in Mankato on June 5. We invited representatives of parochial and private school organizations to that hearing, as well as representatives of groups which have opposed the various education aid programs which have been proposed in the Legislature. Several interested citizens also responded to our notice of hearing and appeared to present testimony.

On the basis of this hearing, we have concluded that there is no support for any change in the two constitutional provisions relating to aid to sectarian schools. All of those who appeared before us seemed basically satisfied with the language of the present Constitution.

We should make it clear that this satisfaction stems, in large degree, from confidence on the part of both the opponents

and proponents of the system of aid enacted by the 1971 Legislature that they will prevail in the litigation currently under way. Those who favor the school aid program believe that tax credits or payments to parents avoid the literal prohibitions of these sections and are constitutionally permissible. Those who oppose it appear to believe that it exceeds the "brink" which the Minnesota Supreme Court delineated in Americans United and involves the establishment of religion prohibited by the United States Constitution. They believe that they will be successful on appeal.

However unfounded the hopes and expectations of one or the other group may be, neither group has provided enthusiastic support for constitutional amendment. In the absence of such support, we do not believe that constitutional change is desirable or attainable. Our basic approach to the problem of constitutional revision has been to call for revision only where the present language is serving as an impediment to the operation of state government. All seem to agree that it is not serving as such an impediment. In these circumstances we cannot recommend revision.

The Committee believes that no change is possible in a field such as this, unless the proposal receives substantial public support. Given the relatively unenthusiastic position of this constitutional language, we do not believe that sufficient public support could be generated for any change.

In taking this position, we bear in mind the warning voiced by Chief Justice Burger in a 1971 case. In striking down the Pennsylvania and Rhode Island programs discussed above, he stated:

A broader base of entanglement of yet a different character is presented by the divisive political potential of these state programs. In a community where such a large number of pupils are served by church-related schools, it can be assumed that state assistance will entail considerable political activity. Partisans or parochial schools, understandably concerned with rising costs and sincerely dedicated to both the religious and secular educational missions of their schools, will inevitably champion this cause and promote political action to achieve their goals. Those who oppose state aid, whether for constitutional, religious, or fiscal reasons, will inevitably respond and employ all of the usual political campaign techniques to prevail. Candidates will be forced to declare and voters to choose. It would be unrealistic to ignore the fact that many people onnfronted with issues of this kind will find their votes aligned with their faith.

Ordinary political debate and division, however, vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political divisions along religious lines was one of the principal evils against which the First Amendment was intended to protect...To have States or communities divide on the issues presented by state aid to parochial schools would tend to confuse and obscure other issues of great urgency....[16]

Since a constitutional amendment would have to be submitted as a seperate issue to the voters of the state, we believe that all of the evils of sectarian division of political issues would exist. Given the difficulty of amendment to the state constitution, this would undoubtedly insure defeat for a proposal.

Apart from these practical considerations, we believe that the Constittution should remain unaltered. Clearly an unnecessary entanglement between state and church must be avoided. This is simply a matter of good policy. The United States Constitution dictates this. Everyone appears to agree that it is a desirable result. The present Minnesota Constitution provides relatively clear guidelines to be followed in

implementing this mandate. We think that it should be retained.

Accordingly, this Committee recommends no change in the constitutional provisions prohibiting aid to sectarian education.

CHAPTER III

EQUALIZATION OF SCHOOL FINANCE.

The Issue

Financial support for elementary and secondary education has been a recurrent problem both for local school districts and for the Legislature. The question presented to the Committee was whether the Constitution should dictate that all (or some specified portion) of the costs of public elementary and secondary education should be borne by the state treasury.

Thus the question presented to the Committee is narrower than that which may be presented to the Legislature. We do not face the question of whether state support or total state financing of education is sound policy. Rather, we must address the question of whether this policy is so strongly supported that the Legislature should be given no alternative but to adhere to it.

The present Constitution.

The present Minnesota Constitution contains two provisions which bear upon this question directly. They are Article VIII, Section 1, and Article VIII, Section 2, first paragraph. Both provisions were contained in the original state constitution, although the latter provision has been renumbered due to other amendments. They provide:

> Uniform System of Public Schools. Section 1. The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature to establish a general and uniform system of public schools.

Public Schools in each township to be established. Section 2. The legislature shall make such provisions, by taxation or otherwise, as, with the income arising from the school fund, will secure a thorough and efficient system of public schools in each township in the state.

A second paragraph was added to the present sysection 2 (then section 3) in 1877. It has been discussed in Chapter II of this Report and is of no importance here. Until 1964, the present section 2 was numbered section 3.

These constitutional provisions authorize the Legislature to establish a system of public schools. The Minnesota Supreme Court has held that the language of Section 1 merely requires a school for each township, not one in each township.[17]

Early litigation established that the responsibility for establishing a general system of education was upon the state. Nevertheless, the state has long relied upon property taxes to finance a substantial part of the costs of public school education. These property taxes are levied and collected by the local school districts. This method has been upheld by the state courts against challenges based on these Sections and other provisions of the Minnesota Constitution.[18]

Ad valorem taxes, levied on the property within a given school district, have traditionally been the principal source of financial support for public education in this state. In the earliest years, townships were given authority to levy taxes for school purposes. Township schools have been displaced by school districts, which retain that power.

Throughout the history of the state, there has been some "state aid" for public schools. In the earliest years this came exclusively from interest on the State Permanent School Fund, a trust fund established from the proceeds of the "school lands."

The disposition of this fund is discussed in Chapter V. of this report.

More recently, the Legislature has established more direct plans for assisting in school financing. Each session of the Legislature now makes direct appropriations, according to an established formula, for the support of local school districts. The formula is based on the number of students enrolled in the district, subject to certain adjustments. In addition to this regular system, there has been emergency state assistance for financially distressed school districts. A small part of the revenue necessary to support these programs comes from the State Permanent School Fund. The bulk is raised through regular taxation.

The current plan for school finance is established in 1971 Extra Session Laws, c.31, Art.XX The impact of these laws will be discussed below.

Arguments for change.

The substantial majority of witnesses who presented testimony to the Committee favored either extension of the state-aid system or a complete state assumption of the costs of education. The witnesses were, however, aware that this could be accomplished by legislative action without constitutional amendment. Most of them appeared satisfied with leaving the constitutional language unchanged while pressing for legislative enactment of their programs.

The argumants for increasing the role of state government in school financing are based upon the distribution of assessed

valuations, upon a claimed state-wide responsibility for education, and upon the nature of the property tax itself.

Since property taxes are levied upon the assessed valuation of a school district, districts with high valuations can raise more revenue than districts with lower valuations, if both use the same rate of taxation. Valuations, however, do not vary directly with the number of students or the cost of education. Consequently some school districts with high assessed valuations but few students have been able to provide large revenues and expanded educational opportunities, while other districts with lower assessed valuations and more students have had to levy maximum property taxes to maintain bare essential programs.

The ratio of assessed valuation to number of students varies tremendously throughout the state. The problem is particularly exacerbated in the metropolitan areas where commercial and industrial property may be in one school district, contributing to the local tax base but not placing a burden on the local schools, while the employees who work in those plants may be in another district, sending their children to schools but contributing only a residence to the tax base and not a place of employment. The consequence is that "poor" districts, those with a lower valuation per pupil, have greater difficulty in providing equal educational opportunity for all students than other districts.

The Legislature has, over the years, recognized this problem. It now provides school aids which are adjusted in terms of the local property tax effort. It also has provided emergency aid for districts which cannot provide basic education when levying

the maximum tax permissible.

Critics of the present system claim that this is an irrational distribution of public resources. They argue that the quality of education should not depend upon the accident of a child's geographical location. To some extent these critics have based their claims upon the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. That clause provides that "No state shall ...deny to any person equal protection of the laws."

In several states courts have upheld claims of parents or taxpayers from "poor" school districts that the present system of school financing is unconstitutional. The most notable case is Serrano v. Priest, a 1971 California Supreme Court decision.[19] In that case, the court held that the disparity denied the students involved equal educational opportunity. Since the court viewed education as a "fundamental interest" and the distinction on geographic and wealth bases was "constitutionally suspect", the court invalidated the Californis system of school finance. Other courts have held similar plans unconstitutional.[20]

Judicial opinion is not, however, uniform.[21]Some courts have upheld similar financing plans.[22]The United States Supreme Court has agreed to review the general question during its 1972-73 term.[23] Until such review is completed, and made applicable to this state, the Commission must assume that the present plan meets constitutional criteria. If the courts hold that state-wide financing is required by the United States Constitution, no question remains for us to consider. In such a case the Legislature will have a manddate to act in only one

way. If the courts hold that state-wide financing is permissible, but not requred by the Federal Constitution, the Legislature would be free to act.

Some individuals have claimed that the language of the present Minnesota Constitution also requires state-wide financing. This issue was also currently before the Federal District Court in St. Paul, in conjunction with the challenge based upon the United States Constitution. This challenge is based primarily upon the language of the sections cited above, which require the Legislature to establish a "general and uniform" system of schools, and which also require the Legislature to make provision for a "thorough and efficient system" of schools. They claim that this language already requires a system of state-wide financing for education, in order to insure the uniformity which the Constitution calls for.

Again the Committee is not in a position to adjudge the issues which are subject to judicial determination. In the absence of a final court ruling on the question, the Committee must rely upon the decades of experience with the property tax system and assume that its constitutionality will be upheld. If the courts hold that this language of Article VIII, Sections 1 and 2, requires state-wide financing, the duty of the Legislature will be clear and it will have few alternatives. If the courts hold otherwise, the Legislature may continue the present system, alter the percentage of state support, or adopt complete financing.

Another argument for full state financing has been that the state should recognize its obligation in modern society.

The mobility of modern society means that individuals are no longer closely connected with their localities throughout their lifetime. Responsibilities for education should be allocated to those larger areas which will provide them homes throughout their lives.

Some states have accepted this approach as a matter of policy. Hawaii has long provided full financing of education from the state treasury.

Finally, some educators have supported a change to state level financing because of the apparent unpopularity of the property tax.

Support for some form of state financing for schools has been widespread. Recently the President's Commission on School Finance recommended that State Governments assume responsibility for substantially all of educational finance, leaving local districts the option of providing a relatively modest supplement through local taxation.

The text of the recommendation is:

> The Commission recommends that State governments assume responsibility for financing substantially all of the non-Federal outlays for public elementary and secondary education, with local supplements permitted up to a leven not to exceed 10 percent of the State allocation.
>
> The Commission further recommends that State budgetary and allocation criteria include differentia is based on educational need, such as the increased costs of educating the handicapped and disadvantaged, and on variations in educational costs within various parts of the State.[23a]

The Commission also recommended federal "incentive grants" to encourage States to implement state-wide financing.

The state Constitution does not now hinder the implementation of this recommendation, should the Legislature see fit to do so. Implementation of such a program would require

substantial annual state expenditures. More than $400 million is now raised by local taxes; if full state financing is adopted, this will be added to the general state budget, in addition to present state aid programs.

The opponents of such a proposal stress the importance of local control of education. They point to the long and satisfactory history of elected local school boards controlling local schools. In particular, they point to the responsibility of these boards to local communities for educational policy and for the level of financial support. The opponents of state financing fear that state financing might lead to less rigorous control of school finance, and thus eventually lead to higher taxes. They also fear that state financing would reduce the control which local communities now have over their schools.

Both proponents and opponents of change appear to agree that there is merit in the present constitutional language. It leaves to the Legislature to address the problem periodically and to adopt solutions which meet the changing circumstances of the times. The present Constitution appears to permit the Legislature to decide all of the questions to which testimony was directed, without placing these questions on the ballot for popular referendum as constitutional amendments.

Recommendation.

The Committee recommends no change in these sections. After evaluating the testimony and exhibits presented to it, the Committee came to the conclusion that the precise system of state assistance to public education and the precise formulas for such assistance are properly in the domain of the Legislature.

The present constitutional language grants the Legislature ample powers to deal with these problems. This provides flexibility which a constitutional enactment would eliminate.

Unless a decision is made to provide 100% state aid for education, a constitutional provision would need to specify the formula for distribution of funds. We believe that such a formula would be entirely inappropriate in the Constitution. Rather, this is better left to legislative determination. The exigencies of the situation will dictate both the level and distribution of the funds. We are convinced that state aid is a permanent feature of school financing and are not concerned with the remote possibility that the Legislature might some day repeal state aid laws or reduce the support given to public education. By its very nature public education draws support from every part of the state.

We do not believe that a case has been made for a constitutionally mandated 100% funding requirement. Even the President's Commission recommended that there be some permission for limited supplementary local school financing. To do otherwise would create a financially rigid, lock-step, state-wide educational system which does not appear to be desirable. Our recommendation would not preclude the Legislature from following this course, if, at any future time, a majority of the legislators thought that state-wide financing was a feasible alternative.

The Committee, of course, takes no position on the issues currently being litigated. If the courts hold that state-wide

financing is required by the United States Constitution, the state must conform. If the courts hold that the present system of state financing is contrary to the Minnesota constitution, nothing in this recommendation would stand in the way of immediate legislative implementation of such a decision.

This is an area in which flexibility has been an advantage in allowing the Legislature to adapt educational programs to the changing circumstances. We believe that this ultimate responsibility should be left with the Legislature.

CHAPTER IV

THE ORGANIZATION OF HIGHER EDUCATION

The Issues.

Higher education presents two issues of constitutional dimensions for consideration by the Commission. The first issue is whether the Constitution should contain language regarding the structure of institutions of higher education? If so, what should that structure be? Although there are several state systems of higher education, including the University of Minnesota, the State College System, the Junior College System, and the Vocational-Technical Schools, the Constitution provides only for the University. The others are statutory bodies.

The second question relates to the constitutional language which provides for the University. It provides a certain autonomy for the institution. Is this a desirable result?

We address these two questions seperately. A third topic, relating to the Permanent University Fund, is the subject of Chapter V of this report.

A. HIGHER EDUCATION IN GENERAL

Constitutional language.

There is no language in the Constitution dealing with higher education in general. The only section deals specifically with the University of Minnesota.

Acting under its general authority, the Legislature has established state colleges, junior colleges, and area vocational-technical schools. State colleges and junior colleges are

governed by two seperate boards of trustees. Area vocational-technical schools are governed by the state board of education and the local school bards.

The Legislature has also created a Higher Educational Coordinating Commission, to coordinate the activities of these institutions, the University of Minnesota, and the private colleges and universities in the state. The Coordinating Commission is also a statutory body, not established in the Constitution.

Nature of the Problem.

Two interrelated problems arise. Should the Constitution spell out the organization of higher education in the state? If so, should that system be a unitary one with responsibility centered in a single governing body or should there be seperate governing bodies for different kinds of institutions?

The status of the University of Minnesota is necessarily involved in these determinations. Its situation is discussed in detail below, but must also be mentioned here. Any change in the constitution would necessarily involve reconsideration of the status of the University.

The first question is whether there should be a unified state board to oversee all forms of higher education. Wisconsin has recently adopted statutes which merge the governing bodies of the former University of Wisconsin and the former State University System (which is the Wisconsin equivalent of the Minnesota state college system). Apparently the intention is to provide more effective coordination and allocation of resources between the several institutions of higher learning.

The Committee requested testimony on this issue at its May 4th meeting in Moorhead. There was no support for unification of the several systems of higher education under the management of one board. Representatives of both the University of Minnesota and the State College System opposed unification. They expressed the view that the different educational objectives of the different kinds of institutions were best met with seperate governing boards.

The Committee agrees that each of the systems of higher education has a seperate educational mission. While there is some overlapping of purpose and a clear need for coordination, we believe these different purposes are best served by seperate administrations.

If there would be only one governing body to oversee all public institutions of higher learning within the state, that body might lost sight of the varying objectives of different kinds of institutions. The magnitude of its task would require it to delegate much of its authority to administrators on various campuses and in the several sub-systems. If this occurred, there would be another level of bureaucracy in the educational system, and the governing board would be further removed from problems of the institutions. A new level of administration would be necessary to serve the new board and implement its decisions. We believe this would be undesirable.

Accordingly, the Committee recommends that the basic structure of higher education in the state be unchanged.

The Committee has been concerned, however, that structures for coordination of higher education programs be strengthened.

In making appropriations, the Legislature needs to ascertain that there is not unnecessary duplication of programs or facilities. The Higher Education Coordinating Commission has performed this task in the past. It is a body created by the Legislature. See Minnesota Statutes, chapter 136A, as amended by 1971 Laws, chapter 269. It has the duty of engaging in long-range planning and reviewing plans for curricular change or development at various kinds of institutions in the state. It has the power to review and recommend, but not the power to control the governing bodies of the various state institutions. The commission also coordinates the plans of public institutions with whose of the privae colleges and universities in the state.

The Committee is of the opinion that this form of coordination is a healthy middle way between total centralization and total decentralization of control. It leaves the responsibility for decision-making with the governing boards of the various institutions, but this repsonsibility must be exercised in the light of the plans and activities of others. We do not believe that any of these boards act capriciously. If they differ from the recommendations of the Coordinating Commission, they remain free to act, but they fact the burden of defending their positions before the Legislature when next requesting appropriations. We believe that this is a sensible solution.

The powers of the Higher Education Coordinating Commission have expanded as confidence in its work has grown. The 1971 Legislature added the duty to review curricular proposals and changes to its long-range planning authority.

This Committee believes that the Higher Education Coordinating Commission should be given authority to revies curricular proposals and changes to its long-range planning authority.

This Committee believes that the Higher Education Coordinating Commission should be given authority to review and make recommendations on the budgetary requests of the several institutions of public education. The Legislature could use the assistance of such a neutral body in assessing the relative merits and priorities of the several institutions. In making this recommendation, the Committee believes that the Coordinating Commission should exercise the same kind of review and recommendatory function it now possesses with regard to curricular matters. It should not have the power to veto or cut a proposed budget. It should only have the power to review it with respect to the total educational expenditures of the state and the needs of other institutions. If it declines to endorse a proposed asking, the governing body of that institution should be free to go forward to the Legislature with its original request; it would however, face a certain burden of justifying its insistence upon its original request.

The Committee believes that this change can be accomplished by statutory amendment. There is no need to add to the Constitution to achieve the desired result. The proposal does not impair the autonomy of the University of Minnesota, since the Regents of that institution are free to act without regard to the recommendations of the Coordinating Commission, although

they would do so with the special burden of persuation mentioned above. It only spells out procedures for the Regents to follow in approaching the Legislature with fund requests. The other institutions are clearly subject to statutory regulations.

At the Moorhead hearings, the representatives of the University and the other institutions agreed that this would be the most satisfactory system of coordination.

The Committee thus recommends no constitutional change regarding the coordination of higher education. The Committee does recommend that the Legislature amend Chapter 136A of the Minnesota Statutes to provide the kind of financial review we have suggested above.

Since we recommend that the present structure of higher education be retained, we turn to the question of whether it ought to be written into the Constitution. Chancellor G. Theodore Mitau of the State College System testified at our Moorhead meeting. While he expressed a mild preference for a constitutional status for his institution, he agreed that the statutory form of organization had served well.

The Committee is of the opinion that there is no need for constitutional change spelling out the organization of higher education. No one has shown disadvantages resulting from the present structure. It has permitted the Legislature to be flexible in its approach to the problems of higher education. That flexibility will undoubtedly continue to be responsibly exercised. Spelling out the organization of the several governing boards in the Constitution would add unnecessary detail to

our fundamental document. It might create difficulties in adapting to future situations. We believe this would be unwise.

The Committee thus recommends no additional provisions relating to higher education.

B. THE UNIVERSITY OF MINNESOTA

Constitutional language.

Article VIII, section 3, of the Minnesota Constitution provides:

> The location of the University of Minnesota, as established by existing laws, is hereby confirmed, and said institution is hereby declared to be the University of the State of Minnesota. All the rights, immunities, franchises and endowments heretofore granted or conferred are hereby perpetutated unto the said university; and all lands which may be granted hereafter by Congress, or other donations for said university purposes, shall vest in the institution referred to in this section.

The courts have held that this language "incorporates" the charter of the University into the state constitution.[24] Thus, the Legislature cannot amend the Charter by an ordinary law. Apparently it would require a constitutional amendment to make such an alteration.

The original charter was passed by the Territorial Legislature in 1851. Territorial Laws, 1851, c.3. It provides for a Board of Regents of twelve members, elected by the Legislature for six year terms. The act vests the "government of the University" in the Board of Regents. The courts have held that this provision gives the Regents a great deal of autonomy from Legislative control.

Arguments for change.

This autonomy of the University has been the primary focus of critics of the present Constitution. Representative Ernest Lindstrom appeared at our May 4th hearing in Moorhead, requesting that we study this problem, but not recommending any specific change.

The state courts have established the autonomy of the University based upon this constitutional section. The precise boundaries of autonomy are far from clear. Charter vests the government of the University in the Board of Regents. Thus the University seems to be immune from specific legislative directives to take certain action or to refrain from taking certain action.

A Committee investigation has indicated that the Legislature retains substantial authority over the University. Through the wise exercise of this authority, the Legislature can guide the University in making broad policy decisions, while abstaining from matters of detail, which are more properly left to the governing body of the institution.

Legislative control can be exercised through the appropriations process. The Legislature has repeatedly placed "riders" on appropriations measures or passed special appropriations for limited purposes. Such enactments can serve to direct the general policy of the University, particularly by allocating funds to particular fields of study, without entangling the Legislature in unnecessary detail.

The dependence of the University upon state appropriations permits the Legislature to exercise a kind of persuasive supervision, as well. As legislators make known their collective opinion about certain matters, the University becomes aware of potential adverse financial consequences.

Finally, the Legislature retains the authority to enact general legislation. Thus, if a law is of general application, not directed specifically to the University, the University is bound like any other business or person in the state. Thus the Regents were held subject to the state labor relations act. Equally clearly, other general legislation would apply.

All of these points indicate that the Legislature is not powerless in dealing with the University. It can strongly influence, and perhaps control, questions of major policy. The Regents simply cannot afford to ignore its influence on such matters. On questions of the details of administration, however, the Regents do retain autonomy. The Committee believes that this is a desirable balance between legislative authority and administrative responsibility for any state institution. The present constitutional provision protects this balance. It should be preserved.

At the public hearing in Moorhead, Dr. Malcolm Moos, President of the University, testified in favor of retaining autonomy. He pointed out that two other great state universities with which the University of Minnesota is often compared, those in California and Michigan, have similar constitutional status.

While the Committee finds this comparison interesting, it does not rely upon it in making its recommendation. The recommendation is based on the need for balancing academic independence and fiscal responsibility. Dr. Moos also discussed this point at length in his testimony. By its very nature, freedom of academic inquiry will sometimes generate political opposition. The legal autonomy of the academy serves to insulate, but not to isolate, it from the exigencies of daily political life. The long history of the development of academic freedom in this country is a valuable guide to our future constitutional course.

The Committee believes that the present constitutional structure of the University is adequate and proper. We recommend that Article VIII, Section 3, be retained in its present form. As we discussed above, we also recommend that the University and other institutions of higher education be required to submit its financial requests through the Higher Educating Commission for review and recommendation. By providing information and impartial recommendations, this will strengthen legislative control over the financial affairs of the University.

In making this recommendation, we are aware that we are treating the University different from the other state institutions of higher learning. We recommend that constitutional provisions relating to the University be retained, but that none be added for other parts of the state system. We are making this recommendation because we believe that the present constitutional system has worked well and does not require alteration. We would not recommend change solely for the sake of symbolism or

constitutional symmetry. We believe that the University is sufficiently responsive to legislative direction on questions of broad policy and financial control. Since we have seen no clear need for change, we do not recommend any change.

CHAPTER V

OTHER ISSUES

The Committee also briefly discussed two other issues in the course of its deliberations. We deal with these in summary fashion.

A. ORGANIZATION OF STATE EDUCATION DEPARTMENT

The Minnesota Constitution contains no specific language dealing with the organization of the State Education Department. The organization of the department, including the constitution of the State Board of Education, the provisions for selection and term for the Commissioner of Education, and other details is spelled out in statutes.

Many state constitutions contain specific provisions regarding the composition of a state board of education and the selection of a chief state school officer. Some provide for an elected board or an elected state superintendent. Others provide some form of insulation of the state board from the usual political process. Many state constitutions, like the Minnesota one, are silent on the issue, leaving it to the Legislature.

Following our basic approach to the task of constitutional revision, we concluded that this problem did not merit further attention. The Legislature currently has power to establish the form of the state education department. The imposition of constitutional language would simply impede the ability of the Legislature to respond to changing circumstances. We do not believe we should hinder such change.

In view of the increasing role of state government in the field of education, some states have made the chief school officer a Secretary of Education, a member of the Governor's cabinet and politically responsible for the operation of his department. Other states have sought to insulate the chief school officer behind a non-partisan long-term state board. We do not make a choice between these approaches. We do not believe that the Constitution should dictate a choice. We believe, rather, that this should be left to the Legislature.

Accordingly, we are making no recommendation on the organization of the education department.

B. PERMANENT SCHOOL FUND AND PERMANENT UNIVERSITY FUND

At the March 17th joint hearing with the Finance Committee the Committee received testimony regarding the investment and management of the Permanent School Fund and the Permanent University Fund. At its May 4th hearing, it received further testimony regarding the Permanent University Fund.

These funds are established and controlled by Article VIII, Sections 4, 5, 6 and 7, of the Constitution. Land, timber, and other assets of the permanent school fund are sold from time to time to add to the cash principal of the fund. This cash is invested by the State Investment Board; the proceeds are distributed to local school districts as part of the school aids. This interest provides only a part of the school aid appropriated by the Legislature. The remainder must be met from general taxation.

The Permanent University fund was similarly established. It is managed by the Board of Regents. Its proceeds go to support the University.

Two kinds of questions seem to arise with regard to these issues. The first regards the nature of limitations on investment and management of the funds. These are properly questions for the Finance Committee and not the Education Committee. We take no position on them.

The second type of question involves the management and conservation of state lands which remain subject to the trusts. We believe that these issues are properly ones for the Finance Committee and/or the Natural Resources Committee. Accordingly we take no position on them.

CHAPTER VI

SUMMARY OF CONCLUSIONS

In summary, the Committee recommends that there be no amendment to the constitutional provisions relating to education.

Because of the widespread support for the present language and the absence of any call for revision, we recommend retension of the present language of Article I, section 16, and Article VIII, Section 2, Paragraph 2, relating to aid to sectarian education.

We recommend no change in the language relating to financing of education, believing that the present language of Article VIII, Sections 1 and 2, grant the Legislature wide discretion to adjust the school aid programs to modern needs.

We recommend against the addition of language relating to higher education in general. We also recommend against change in the language relating to the University. The present system seems to have worked well and does not require alteration.

We do recommend that the Legislature provide by statute for review of budget proposals of all state institutions of higher education by the Higher Education Coordinating Commission.

We recommend no addition to the Constitution regarding the organization and structure of the state Department of Education. We believe these matters can be best handled by legislative enactment.

Since we believe that they are within the province of other committees of this Commission, we are making no recommendations on the question of the disposition and investment

of the Permanent School Fund and the Permanent University Fund.

Respectfully submitted,

O. J. HEINITZ, Chairman

ORVILLE EVENSON

DUANE SCRIBNER

NOTES

1. Throughout this report, references are made to the provisions as they stand in the present text of the Constitution. The Education Committee is aware that the Structure and Form Committee is making recommendations on the rearrangement and reorganization of the Constitution. Those proposals are cross-indexed to the present numbering system. For the sake of simplicity, we refer only to the Constitution as it presently stands.

2. Burns v. Essling, 156 Minn. 171, 174, 194 N.W. 404, 405 (1923).

3. Americans United v. Independent School District No. 622, 288 Minn. 196, 179 N.W.2d 146 (1970).

4. Ibid., 288 Minn. at 410.

5. Everson v. Board of Education, 330 U.S. 1 (1947).

6. State ex rel. Reynolds v. Nusbaum, 17 Wisc.2d 148, 156-157, 115 N.W.2d 761, 765 (1962). Article I, Section 18, of the Wisconsin Constitution provides: "The right of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; nor shall any control of, or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes or worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries." As a consequence of this decision, the Wisconsin Constitution was amended in 1967 to permit the transportation of parochial school students. Wisconsin Constitution, article I, section 23.

7. Lemon v. Kurtzman, 403 U.S. 602, 612-3 (1971) (citations omitted).

8. See Note, 56 Minn. L. Rev. 189, 193-4 (1971).

9. See, Giannella, "Religious Liberty, Non-establishment, and Doctrinal Development," 81 Harv. L. Rev. 513, 533 (1968); Hammett, "The Homogenized Wall," 53 A.B.A.J. 929, 932 (1967).

10. Choper, "The Establishment Clause and Aid to Parochial Schools," 56 Calif. L. Rev. 260 (1968).

11. Walz v. Tax Commission, 397 U.S. 664 (1970).

12. Lemon v. Kurtzman, 403 U.S. 602 (1971).

13. Tilton v. Richardson, 403 U.S. 672 (1971).

14. See Columbia University, Legislative Drafting Research Fund, Index Digest to State Constitutions, p. 370 and appendix.

15. Section 1.01.

16. Lemon v. Kurtzman, 403 U.S. 602, 622 (1971).

17. In re Dissolution of School District No. 5, 257 Minn. 409, 102 N.W.2d 30 (1960).

18. Associated Schools of Independent School District No. 63 v. School District No. 83, 122 Minn. 245 (1913). Courts had earlier upheld the organization of local school districts: Board of Education of Salk Center v. Moore, 17 Minn. 412 (1871), Curryer v. Merrill, 25 Minn. 1 (1878).

19. 487 P.2d 1241, 96 Cal.Rptr. 601 (1971).

20. For a discussion of the applicable federal law, see Schoettle, "The Equal Protection Clause in Public Education," 71 Columbia L. Rev. 1355 (1971). See also the decision of the Federal District Court for Minnesota in Van Dursatz v. Hatfield, No. 3-71 Civ. 243 (1971).

21. See Schoettle, op. cit., supra.

22. Burrus v. Wilkerson, 310 F.Supp. 572 (W.D.Va.1969), aff'd mem. 397 U.S. 44 (1970); McInnis v. Shapiro, 293 F.Supp. 327 (N.D.Ill. 1968), aff'd mem. 394 U.S. 322 (1969).

23. San Antonio Independent School District v. Rodriguez, 40 Law Week 3576 (May 30, 1972).

23a. United States, The President's Commission on School Finance, Schools, People, and Money: The Need for Educational Reform, p. 36.

24. State ex rel. University v. Chase, 175 Minn. 259, 220 N.W. 951 (1928); State ex rel. Sholes v. University, 236 Minn. 452, 54 N.W.2d 122 (1952).

RESEARCH PAPERS PREPARED FOR THE COMMITTEE:

Staff Memorandum on: "Trends in Financing Public Schools" by Jon Hammarberg, February 15, 1972

Staff Memorandum on: "State Aid to Sectarian Education" by Joseph Hudson, May 15, 1972

APPENDIX

Persons and groups who presented evidence before the Committee

Meeting of March 17, St. Paul

Robert E. Blixt, Executive Secretary, State Investment Board
Mrs. Joseph Brink, St. Joseph, Minnesota
C. B. Buckman, Deputy Commissioner, Department of Natural Resources
Howard Casmey, Commissioner, Department of Education
Hugh Holloway, Superintendent, Independent School District #191, Burnsville
Mary Jo Richardson, State Board of Education
Roy Shulz, Minnesota Real Estate Taxpayers Association

Meeting of May 4, Moorhead

James V. Brinkerhoff, Vice-President, University of Minnesota
Richard Hawk, Executive Secretary, Higher Education Coordinating Commission
Ernest A. Lindstrom, State Representative
G. Theodore Mitau, Chancellor of State Colleges
Malcolm Moos, President, University of Minnesota

Meeting of June 5, Mankato

Henry J. Bromelkamp, Minnesota Citizens for Educational Freedom
LeRoy Brown, Minnesota Catholic Conference
Alice Cowley, St. Paul
Franklin G. Emrick, Minnetonka
Linn J. Firestone, President, Jewish Community Relations Council
A. L. Gallop, Minnesota Education Association
William Korstad, Council for Minnesota Association of School Administrators and Minnesota School Principals
Jo Malmsten, Minnesota Congress of Parents and Teachers
John F. Markert, Minnesota Catholic Conference
Victor Shultz, State Representative
W. A. Wettergren, Minnesota School Boards Association
Henry Winkels, Minnesota Federation of Teachers

Others Who Submitted Letters or Written Statements to the Committee:

A. L. Gallop, Executive Secretary, Minnesota Education Association 2-1-72
Thomas H. Hodgson, Executive Director, Citizens for Educational Freedom 1-13-72
Raymond E. Maag, Assistant to the President, Minnesota South District of the Lutheran Church, Missouri Synod 1-14-72
W. A. Wettergren, Executive Secretary, Minnesota School Boards Association 1-18-72
John F. Markert, Executive Director, Minnesota Catholic Conference 1-21-72
LeRoy Brown, Director, Education Department, Minnesota Catholic Conference 1-25-72
Dr. John S. Hoyt Jr., Chairman, Edina Board of Education 3-7-72
Jerry M. Deal, President, Minnesota Real Estate Taxpayers Association 3-8-72
Edgar M. Carlson, Executive Director, Minnesota Private College Council 5-1-72
David E. Mikkelson, Assistant Hennepin County Attorney 3-8-72
Gerald W. Christensen, Director of State Planning Agency
Robert F. Arnold, Executive Secretary, Minnesota Association of Elementary School Principals

ORGANIZATIONS AND INDIVIDUALS ON COMMITTEE MAILING LIST:

Association of Secondary School Principals, David Meade, Exec.Sec.
Catholic Education Center, Rev. John Gilbert
Citizens for Educational Freedom, Minn.Chapter, Thomas Hodgson
Commissioner of Education, Howard B. Casmey
Metropolitan Student Coalition, Miss Debra Conner
Minnesota Association of Elementary Principals, Robert Arnold
Minnesota Association of School Administrators
Minnesota Catholic Conference, John Markert
Minnesota Catholic Education Association, LeRoy Brown
Minnesota Council of Churches
Minnesota District of Lutheran Churches, Dr.Raymond Maag
Minnesota Educational Association, A. L. Gallop
Minnesota Farm Bureau, Vern Ingvalson
Minnesota Federation of Teachers, Edward Bolstad
Minnesota Higher Education Coordinating Commission
Minnesota Private College Council
Minnesota Public Interest Research Group, Mark Vaught
Minnesota School Boards Association, W. A. Wettergren
Minnesota State College Student Association, Dan Quillan
Minnesota State Jr. College Student Government Association
Minnesota State Junior College Board
Minnesota Student Association, Jack Baker
Minnesota Taxpayers Association, Charles P. Stone
Minnesota Vocation Association
Parent-Teacher Association
State Board of Education
State College Board
State Planning Agency, Eileen Baumgartner
Vocational-Technical Education Division
University of Minnesota, Dr. Malcolm Moos
University of Minnesota Board of Regents, Elmer L. Andersen

Mrs. Alice Cowley
Senator Harold Krieger
Mrs. Joseph Brink
Mrs. Barbara Jones
Dr. Hugh Holloway
Rep. Vern Long
Mr. Van Mueller
Senator Paul Overgaard
Rep. Harvey Sathrie
Mr. Roy Schulz
Mr. John Yngve

EXECUTIVE BRANCH HEARING
June 1, 1972 Room 15 State Capitol
Hearing held before full Commission
Committee Members present: Senator Carl Jensen, Senator Kenneth Wolfe, Mr. Karl Rolvaag

James B. Goetz, Former Lieutenant Governor, appeared and stated he would support a constitutional amendment which would allow the governor and lieutenant governor to be elected as a team. He favors the office of lieutenant governor as a fulltime position to assist the governor in administerial and ceremonial functions. He recommended eliminating as constitutional offices the positions of attorney general, auditor, treasurer and secretary of state, and suggested their functions be carried out by officials appointed by the governor. He further recommended the Legislature should establish a post audit process and the functions of auditor and treasurer rest with cabinet officers, with administrative functions of secretary of state transferred to the governor. He advocated yearly legislative sessions and a change in the constitutional requirement for convening of the legislature and dates for delivery of inaugural and budget addresses to provide additional time for preparation.

Val Bjornson, State Treasurer, stated forty of the fifty states elect a state treasurer whose responsibility it is to determine the level of bank balances for state operations. He mentioned he is proud and pleased to be responsible to the people directly and not to an appointing authority. Two of the most important bodies in the whole state are the Executive Council and the Investment Board, composed of five elective constitutitonal officers each. He does not favor appointive state officers.

Rolland Hatfield, State Auditor, stated a strong executive system is needed and the seperate election of secretary of state, state auditor, state treasurer, and attorney general tends to weaken the governor's control over the executive department. He favors election of the governor and lieutenant governor as a team. He recommends the office of Public Examiner be limited to the auditing of local governments only, the pre-audit function be transferred to the Commissioner of Administration, and a new state auditing department created to be responsible for the post-audit of all state government agencies including the legislature, retaining the title of state auditor.

Joseph L. Donovan, Former Secretary of State, stated he favors the election of auditor, treasurer and secretary of state with the secretary of state not subservient to anyone including the governor.

Russ Tharaldson, citizen, stated he support Mr. Donovan's position. He believes the elective process is best.

Copies of letters with recommendations from the following persons were distributed to the Committee:

William Frenzel, Congressman, recommends three elected constitutional officers. He does not feel the auditor or treasurer need to be elected but recommends a post-auditor elected by the legislature in joint convention.

Wendell R. Anderson, Governor, favors election of the governor and lieutenant governor jointly. He now favors a longer ballot rather than all appointees as he feels it helps the people of the State to have both political parties represented at the state level.

Arlen Erdahl, Secretary of State, favors elective constitutional officers rather than appointive as he states they should be directly accountable to the electorate. If any are to be made appointive he would recommend the attorney general. He suggests combining the offices of secretary of state and lieutenant governor.

The meeting was adjourned at 4 P.M.

MINNESOTA CONSTITUTIONAL STUDY COMMISSION
G-19E Administration Building / St. Paul, Minnesota 55155
(612) 296-6683

REPORT OF THE

EXECUTIVE BRANCH COMMITTEE

TO THE

CONSTITUTIONAL STUDY COMMISSION

ON

SEPTEMBER 7, 1972

* * * * *

SENATOR CARL A. JENSEN
SENATOR KENNETH WOLFE
HON. KARL F. ROLVAAG

TABLE OF CONTENTS

I. INTRODUCTION

A. BACKGROUND

The Executive Branch Committee was assigned the task of examining the provisions of the Minnesota Constitution relating to the Executive Branch of state government (Article V) and making recommendations on any possible revision. The committee was also assigned the duty of reviewing constitutional provisions dealing with impeachment of officers found in Article XIII.

The committee consisted of Senator Carl A. Jensen, Governor Karl Rolvaag and Senator Kenneth Wolfe. Senator Jensen served as committee chairman. Stan Ulrich of the University of Minnesota Law School provided research assistance to the Committee.

The committee was particularly fortunate in being able to have access to the recommendations of several past studies of the executive branch of state government in Minnesota. The studies included the Minnesota Efficiency in Government Commission of 1968. The committee has also found helpful the proposals of the Minnesota Constitutional Commission of 1948.

In addition to its private study, the committee conducted a public hearing on June 1 in St. Paul. At that time the committee was pleased to hear from several present and past holders of executive offices, as well as interested citizens. In addition, a good deal of written correspondence has been directed to the committee during the course of its study. A complete listing of all those persons testifying and submitting letters or written statements is attached to the body of this report.

B. GENERAL APPROACH TO THE STUDY

The committee has been concerned with the need to create constitutional language which will be adequate for the needs of modern Minnesota. The government of this state must be responsive to the needs of its people. Accordingly, the committee has attempted to design an executive branch of state government which would be both visible and responsive to Minnesotans in both present and future generations.

The constitutional structure of the executive branch of state government in Minnesota has remained basically the same since the original constitution was written in 1957. Although there have been other minor amendments, the only major change in the executive branch has been the extension of the terms of the executive officers from two to four years, by an amendment adopted in 1958, effective in 1962.

The present system of a divided executive authority which we have in Minnesota and which is common to nearly all of our states grew out of our early experience with the English colonial system. When the states were established after the Revolutionary War, there was a strong desire to have as weak an executive system in each of the states as possible in order to prevent the same arbitrary and capricious use of power which the colonists had experienced under the British regime. The general theory of government at that time was to provide that each executive function be performed by a person who was elected by all of the people of the state.

Whatever had been the merits of this system in the past, it seems to the committee that in our modern world we cannot operate state government with a divided executive system. The separate

election of the lieutenant governor, secretary of state, state auditor, state treasurer, and attorney general tends to weaken the governor's control over the executive department and yet the governor is held accountable by the people of the state for functions in the executive department over which he really has no control or authority.

C. PENDING CONSTITUTIONAL AMENDMENT

In making its recommendations, the committee has considered the possible impact of a proposed constitutional amendment which will be voted on by the people of Minnesota this November. That amendment would require that the governor and lieutenant governor be elected on a joint ballot, rather than separately as is presently the case. The amendment would also provide that the lieutenant governor would no longer preside over the Senate and allow his salary to be set by law. (The lieutenant governor's salary is presently double that of the members of the Legislature.) If the proposed amendment were to be adopted, the lieutenant governor would become a purely executive officer without legislative functions. His duties would presumably be set by statute or by executive order.

II. OFFICE OF LIEUTENANT GOVERNOR

A. ISSUE

Should the office of lieutenant governor be retained and given additional responsibilities or should the office be abolished and the constitutional and statutory duties of the office be otherwise provided for?

B. PRESENT CONSTITUTIONAL LANGUAGE

Article V, Sec.1 calls for the election of a lieutenant governor. He serves a four year term (Sec.3). His principal duties are to preside over the State Senate and to succeed to the office of governor, if that office should become vacant (Sec.6). If the proposed amendment on this year's ballot passes, the duty of the lieutenant governor to preside over the Senate will be eliminated. With passage of the amendment and the allowed increase in salary, the lieutenant governor would presumably be assigned other duties by law or by the governor with whom he would have run for election on a joint ballot.

C. BACKGROUND

The principal duty of the lieutenant governor is to succeed to the office of governor, should that office become vacant by death, resignation, or removal. Under the present Constitution he also has the duty of presiding over the Senate, analogous to that of the vice president of the United States.

Unlike the vice president, however, the Minnesota State Supreme Court has ruled that the lieutenant governor has no tie-breaking vote. (Palmer v. Perpich, 289 Minn.149 (1971)). Hence, his power as a presiding officer is limited to procedural rulings over a body of which he is not a member. It is no wonder, then, that until recent years when Minnesota has been fortunate in the quality of men attracted to this office, that the lieutenant governor was considered a part-time position, low in pay and short on substantive responsibilities.

The constitutions of 41 states, including Minnesota, call for the election of a lieutenant governor. One other state has a statute providing for the same officer. The eight other states make different provisions for succession to the office of governor and for a presiding officer for their state senate. Some, like Utah and Wyoming, provide for the secretary of state to succeed to the office of governor. Others, like Oregon, Maine and West Virginia, provide for succession by the presiding officer of the state senate.

D. COMMITTEE CONSIDERATION

The key question which the committee faced in considering this office was whether or not the lieutenant governor can be given sufficient duties and responsibilities which would make the office appealing enough to attract the quality of leadership required to succeed to the office of governor should that office become vacant.

The committee believes that implementation of the proposed amendmend on this November's ballot could go a long way toward achieving that goal. Under the proposal, the lieutenant governor's salary, which is presently frozen at twice that of a state senator ($9600 per year), may be set by the legislature. The lieutenant governor would then be in a position to be a full-time member of the executive branch of state government.

The proposal would also relieve the lieutenant governor of the time consuming responsibility of presiding over the State Senate and encourage the assignment of additional responsibilities to the office. The lieutenant governor would then have full time to devote to such responsibilities and the duties of the office could be substantially increased by the legislature or by the governor through executive order.

Finally, the proposed amendment would require that the governor and lieutenant governor be elected as a team on a joint ballot, not unlike the manner in which we presently elect the president and vice president of the United States. This portion of the proposal involves two major improvements. First, we are assured that the governor and lieutenant governor will be of the same political party guaranteeing that the mandate of the people who elected the governor will be continued in the event that the office should become vacant. Second, the legislature could then enact legislation which would insure, through joint filings in the primary election, that the governor and lieutenant governor are in fact a compatible "team". Under such an arrangement, the governor would have full confidence in delegating major responsibility to the lieutenant governor and, in effect, the lieutenant governor could serve as the governor's "right hand man" or "trouble shooter" in implementing the visible and responsive executive branch which this report proposes.

Allowing succession to remain in the executive branch, within one political party, and to an officer elected by all the people of the state are important reasons for the committee's recommendation on retaining the office of lieutenant governor. The committee is firm in its belief, however, that continuation of the office of lieutenant governor cannot be justified solely on the basis of succession. It is for this reason that the committee urges adoption of the proposed amendment on this November's ballot and the strengthening of the office of lieutenant governor which may then take place.

In making such a suggestion, the committee is not in a position to recommend the specific delegation of powers which should be made to a strengthened office of lieutenant governor. The committee does

refer the legislature to the suggestion of Secretary of State Arlen I. Erdahl, made to this committee in testimony on June 1, 1972. In his statement, Secretary of State Erdahl urged that the offices of secretary of state and lieutenant governor be combined under the title of lieutenant governor and that the new office encompass the present power of succession and several of the more important powers of the secretary of state plus other powers and responsibilities which might be delegated by the legislature. The committee feels the Erdahl proposal merits serious consideration.

Other proposals which have been made by past studies of the executive branch of government in Minnesota include the designation of the lieutenant governor as the governor's "chief of staff" or liaison with local government. The trend in state government at this time seems to be toward strengthening the office of lieutenant governor in just such a manner. For example, in Florida and Indiana the lieutenant governor serves as secretary of commerce; in California and Massachusetts the lieutenant governors are head of the office of intergovernmental management; the lieutenant governors in Alaska and Hawaii also perform the duties of the secretary of state; and in Missouri and Nebraska the governor is authorized to assign duties to the lieutenant governor.

E. COMMITTEE RECOMMENDATION

The committee recommends adoption of Constitutional Amendment#2 appearing on the November 7th election ballot which would require the governor and lieutenant governor to run on a joint election ballot; would allow the legislature to define the compensation of

the lieutenant governor; and would remove the lieutenant governor as the presiding officer of the state senate. The committee further urges the prompt implementation of the spirit of the amendment by the legislature through reasonable adjustment of the compensation of the lieutenant governor and a reasonable alteration in the duties and responsibilities of the office.

Although the committee makes no specific recommendation on the responsibilities which should be delegated to the lieutenant governor, the committee does refer to the legislature the recommendations of Secretary of State Arlen I. Erdahl for the consolidation of the offices of secretary of state and lieutenant governor as well as past studies of the executive branch of Minnesota government and the experiences and precidents established by other states which have a strong and effective office of lieutenant governor.

III. OFFICE OF ATTORNEY GENERAL

A. ISSUE

Should the elective constitutional office of attorney general be retained or should the office be abolished, or be made appointive? In case of changes how should the constitutional and statutory duties of the office be provided for?

B. PRESENT CONSTITUTIONAL LANGUAGE

The constitutional office of attorney general is created in Article V, Section 1. Under Section 5, the attorney general serves a four-year term. He has no constitutional responsibilities other than to serve on the pardon board (Article V, Sec.4); the State Board of Investment (Article VIII, Sec.4); and the State Land Exchange Commission (Article VIII, Sec.7). The governor has the

power to fill vacancies in the office under Article V, Sec.4 and the attorney general may be impeached under Article XIII, Sec.1.

C. BACKGROUND

In addition to the above-mentioned constitutional duties, the attorney general has a number of important statutory responsibilities which make him, next to the governor, one of the most powerful officers in state government.

The most important of the attorney general's responsibilities is to act as chief legal officer of the state. By statute, the attorneys in major state departments are appointed by the attorney general and serve as special assistant attorneys general. In this manner, the attorney general has potential input into nearly every important decision of a legal nature made in state government.

In addition, the attorney general, as chief legal officer of the state, performs civil and criminal litigation on behalf of the state and is often called upon to issue advisory opinions to the governor, legislature, city and county attorneys, attorneys for local school districts, etc. These opinions often contain vital interpretations of important constitutional and statutory provisions and, of course, have the force of law until overturned in court.

In addition to the three constitutional boards of which the attorney general is a member and the broad powers outlined above, the attorney general is a member and the broad powers outlined above, the attorney general has a number of widely ranging statutory responsibilities, e.g., chairmanship of the Minnesota Voting Machine Commission and approval of regulations of the State Board of Health.

Thirty-eight states, including Minnesota, provide for a constitutional-elective attorney general. An additional four states

elect a statutory attorney general; one state's attorney general is elected by the legislature; and the remaining seven states provide for an appointed chief legal officer of the state.

The Model State Constitution makes no mention of an attorney general and it is assumed that the office would be created by the legislature and appointed by the governor.

The 1948 Constitutional Commission of Minnesota recommended retantion of a constitutional-elective attorney general. The Minnesota Efficiency in Government Commission of 1949-51 recommended retention of the attorney general as an appointed official heading a Department of Law. The Minnesota Self-Survey of 1955-58 recommended retantion of the attorney general as an appointed head of a Department of Law and Public Safety. Finally, the report of the Governor's Council on Executive Reorganization of 1968 recommended the appointment of an attorney general within the executive office.

D. COMMITTEE CONSIDERATION

In making its recommendations, the committee is not unaware of the large amount of authority vested in the attorney general and the desirability of insuring the wise and responsive use of that authority.

Rather, it is with a wary eye on this authority that the committee offers its recommendations. At the present time, the office of attorney general is analogous to an octopus with a number of arms reaching out in all directions and into major department of state government via the deputy assistant attorneys general. On one hand, we have department heads, appointed by the governor, serving co-terminously with him, and supposedly responsible to the governor and thus

to the people who have elected him. On the other hand,political imcompatibility between the governor and attorney general transmitted to the departments by officials appointed by each has the potential of disrupting the efficiency and responsiveness of major state departments. The chief legal officer of a major department is an integral part of the workings of that department. In order to maximize efficiency and responsiveness, he must be working as a team with the department head and, thus, the governor.

It is the feeling of the committee that other important responsibilities of the attorney general could also be handled responsibly by a legal officer appointed by the governor. When the voters of the state elect a visible, responsible governor, they expect his already numerous and important appointees to carry out the mandate under which he was elected. Under the strong executive system which this committee is proposing, great responsibility is extended to, and expected from, the chief executive of the state. The committee has confidence in the ability of the voters of the state to elect the kind of governor who can and will accept and use this great responsibility in a wise and responsive manner. Under such a system, attention will quickly focus on a governor who fails to assume such responsibility and the voters of the state will not hesitate to shorten the political career of such a chief executive.

E. COMMITTEE RECOMMENDATIONS

After careful consideration of the present authority vested in the office, the committee recommends the removal of the elective attorney general from the Constitution. The committee recommends that the constitutional responsibilities now held by the attorney general be redesignated by legislative statute to (an) official(s)

appointed by the governor. We offer no specific recommendations for statutory changes in this regard but direct the Legislature's attention to the excellent studies of executive organization in Minnesota mentioned above.

IV. OFFICE OF SECRETARY OF STATE

A. ISSUE

Should the elective-constitutional office of secretary of state be retained, or should the office be abolished, or be made appointive? In case of change, should the constitutional and statutory duties of the office be assigned to other constitutional or statutory offices?

B. PRESENT CONSTITUTIONAL LANGUAGE

The constitutional office of secretary of state is created in Article V, Sec. 1. Section 5 provides that the secretary of state serve a four-year term. The constitutional responsibilities of the office include chairmanship of the state canvassing board and depository of election returns for constitutional officers (Article V, Sec.2); depository of all laws passed by the Legislature and signed by the governor (Article IV, Sec.11); the keeper of the great seal of the State of Minnesota (Article XV, Sec.4); and membership on the State Board of Investment (Article VIII, Sec.4). The governor has the power to fill vacancies in the office under Article V, Sec.4 and the secretary of state may be impeached under Article XIII, Sec.1

C. BACKGROUND

The secretary of state is the chief elections officer of the State of Minnesota. In this capacity, he is the filing officer for all statewide and certain legislative and judicial offices. He

also has responsibility for printing state and constitutional amendment ballots, publishing the election laws and the legislative manual and issuing certificates of election to candidates declared elected by the state canvassing board. Under state and federal campaign financing laws, the secretary of state is also the depository for expenditure and receipt statements filed by candidates for state and federal offices.

As the keeper of the great seal of the State of Minnesota, the secretary of state certified the authenticity of all official records, documents, proclamations, and executive orders of the governor and the acts of the legislature and is the depository for all original engrossed and enrolled acts of the Legislature.

Also filed with the secretary of state are incorporation papers of all corporations, certain financial statements on debts, annual reports of all corporations engaged in agriculture in Minnesota, extradition papers, oaths of office, and certain village and municipal documents.

Until 1970 a major responsibility of the secretary of state was the registration and licensing of motor vehicles by more than three hundred deputy registrars of motor vehicles located throughout the state. This responsibility, along with the former task of issuing licenses for chauffeurs and school-bus drivers, is now handled by the Department of Public Safety.

Thirty-eight states, including Minnesota, have a constitutional-elective office of secretary of state. Four states have a constitutional secretary of state or no such office.

The Model State Constitution makes no mention of a secretary of state and it is assumed that the responsibilities of the office

are provided for by law.

The Constitutional Commission of 1948, the Minnesota Efficiency in Government Commission, the Minnesota Self-Survey, and the Governor's Council on Executive Reorganization all recommended removal of the secretary of state from the Constitution. Opinions differed on whether the position should be retained and made appointive, or whether the responsibilities of the office should be dispersed among other appointed officials.

D. COMMITTEE CONSIDERATION

Many of the factors considered in arriving at other recommendations in this report have entered into our recommendations on the future constitutional status of the secretary of state.

Generally, the committee feels that the executive branch of state government should have one, clearly identifiable head. In order that the governor may be truly responsible to the people for the actions of the executive branch, he must have the power to appoint all officials for whom he is responsible. Good management, efficiency and responsiveness can allow no exceptions to this general rule.

Presently, the responsibilities of the secretary of state are primarily of a bookkeeping and record-filing nature. Voter judgment is all too often based on name identification or return to office of a long-time incumbent. The committee would venture to guess that the average voter does not really know what responsibilities are carried out by the secretary of state. The committee is confident that the present responsibilities of the office could be adequately handled without electing an officer to such a position.

E. COMMITTEE RECOMMENDATION

The committee recommends the removal of the office of secretary of state from the Constitution and the reassignment by the Legislature of the present responsibilities of the office. The committee offers no recommendation on the status or distribution of the present statutory responsibilities of the office, but refers the Legislature to the excellent past studies of executive organization in Minnesota outlined above.

V. OFFICE OF STATE AUDITOR

A. ISSUE

Should the elective-constitutional office of state auditor be retained, or should the office be abolished or be made appointive? If changed, how should the constitutional and statutory duties of the office be provided for?

B. PRESENT CONSTITUTIONAL LANGUAGE

The constitutional office of state auditor is created in Article V, Sec. 1. Section 5 provides that the auditor serve a four-year term. Under Article VIII, Sec.7, the auditor serves as a member of the State Land Exchange Commission and under Article VIII, Sec.4, is a member of the State Investment Board. Under Article IX, Sec.6, subd. 3 and 4, he is responsible for levying a state property tax to pay back faulted bonds and certificates of indebtedness. The governor has the power to fill a vacancy in the office under Article V, Sec. 4, and the auditor may be impeached under Article XIII, Sec.1.

C. BACKGROUND

The state auditor is the state's chief accounting officer

and acts with the commissioner of administration and the public examiner to formulate and prescribe the accounting system used by all departments and agencies of the state.

The auditor is the pre-auditor of receipts and disbursements of the state's funds, issuing warrants to allow payment from the treasury of the state.

In addition to these duties, the auditor serves as a member of the executive council and several other boards and commissions. He administers salary and expense payments to district court judges, the retirement program for legislators, constitutional officers, and commissioners and district court judges. He also apportions various state aids, is charged with the sale and issuance of certificates of indebtedness and general obligation bonds and manages the state bond fund.

Contrary to the beliefs of many people, the state's post-auditing function is not carried out by the state auditor but is a responsibility of the public examiner, who is appointed by the governor with the advice and consent of the State Senate.

Twenty-seven states, including Minnesota have a constitutional-elective auditor. Six states have a constitutional or statutory auditor elected by the legislature and seventeen states provide for the appointment of the auditor or do not have such an officer.

The Model State Constitution makes no mention of an auditor and it is assumed that the officer would be created by the legislature and appointed by the governor.

The Constitutional Commission of 1948, the Minnesota Efficiency in Government Commission, the Minnesota Self-Survey, and the Governor's Council on Executive Reorganization all recommended removal of the auditor from the State Constitution. Opinions differed on

whether the position should be retained as appointive, or whether the responsibilities of the office should be dispersed among other appointed officials.

D. COMMITTEE CONSIDERATION

The recommendations of the committee on the constitutional status of the auditor are based on two major fundamentals of accounting outlined by Auditor Rolland Hatfield in his testimony before the committee on June 1.

The first fundamental is that pre-auditing and post-auditing functions should be performed entirely separately. The present overlap and duplication of such responsibilities is, of course, contrary to this fundamental.

Secondly, sound accounting principles dictate that the post-auditor should not be appointed by the person or office he is to audit. The fact that the present post-audit function is carried out by the public examiner, who is appointed by the governor, is in clear violation of these sound accounting principles.

Auditor Hatfield also points out the importance of having an auditor (either pre- or post-) who is qualified as an accountant, qualifications which would be better established and enforced through civil service or a screening committee of certified public accountants than through election.

E. COMMITTEE RECOMMENDATIONS

The committee recommends the removal of the office of state auditor from the Constitution and the reassignment of the responsibilities of the office by statute. Although the committee is not prepared to outline specifically this reassignment, it does commend

to the Legislature the following recommendations of Auditor Hatfield;

1) The transfer of the entire pre-auditing function to the Depart- of Administration, to be incorporated with the budged and central accounting functions already being perfomrmed by that department.

2) The creation of a new state auditing department responsible for post-auditing all state government agencies. The head of such a department would be appointed by the Legislature. The department would be responsible for both annual financial audits and periodic performance or operational audits.

3) The assignment of the post-auditing function of local governments to the public examiner. The public examiner would also be appointed by the Legislature.

4) The requirement that the public examiner and auditor be certified public accountnts and that the Legislature make the appointment from a list of eligible CPA's submitted by the Minnesota Society of Certified Public Accountants.

5) Both the auditor and public examiner would be appointed for a term of six to ten years and subject to removal only for cause.

VI. OFFICE OF STATE TREASURER

A. ISSUE

Should the elective-constitutional office of state treasurer be retained, or should the office be abolished, or be made appointive? If changed, how should the constitutional and statutory duties of the office be provided for?

B. PRESENT CONSTITUTIONAL LANGUAGE

The constitutional office of state treasurer is created in Article V, Sec. 1. Section 5 provides that the treasurer serve a

four-year term. In Article IV, Sec. 32b, he is charged with responsibility for holding the internal improvement land fund and he must maintain a state bond fund under Article IX, Sec. 6, subd.4. He is a member of the State Board of Investment under Article VIII, Sec.4. He is required to publish an annual report of the receipts and expenditures of the state by Article IX, Sec.11. The governor has the power to fill a vacancy in the office under Article V, Sec. 4 and the auditor may be impeached under Article XIII, Sec. 1.

C. BACKGROUND

The state treasurer is responsible for holding all state funds including investments. The investments include securities held for permanent trust funds, the retirement associations, short-term cash investments, and securities pledged as collateral.

The treasurer is the paymaster for the state and keeps records of all receipts and disbursements of state government. He receives tax receipts from various sources as well as other income items from state departments and institutions.

The bonded indebtedness unit of the treasurer's office keeps records of the indebtedness of the state, redeems bonds at maturity, and pays interest as it falls due on outstanding issues.

The treasurer's liquor stamp division sells liquor tax stamps and distributes receipts to various funds as prescribed by statute.

In addition to these duties, the treasurer serves on a number of state boards and commissions, including the executive council and the state and public employees retirement association boards.

Forty states, including MInnesota, have a constitutional-elective state treasurer. Four state treasurers are constitutional and elected

by the legislature and the remaining six states either do not have a state treasurer or provide for his appointment by statute.

The Model State Constitution makes no mention of a state treasurer and it is assumed that the officer would be created by the Legislature and appointed by the governor.

The Constitutional Commission of 1948, the Minnesota Efficiency in Government Commission, the Minnesota Self-Survey, and the Governor's Council on Executive Reorganization all recommended removal of the state treasurer from the state Constitution. Opinions differed on whether the position should be retained as appointive or whether the responsibilities of the office should be dispersed among other appointed officials.

D. COMMITTEE CONSIDERATION

The committee's concern for efficiency and responsiveness in state government expressed in earlier discussion holds true in its recommendations on the future of the constitutional office of state treasurer.

Again, the kind of qualifications required for the occupant of such a position might be better established and assured by civil service or a screening committee of financial experts.

The committee has every confidence in the ability of a governor, who is the true executive head of state government, to select a person to fulfill the responsibilities of the state treasurer in collecting and disbursing state funds.

E. COMMITTEE RECOMMENDATIONS

The committee recommends the removal of the office of state treasurer from the Constitution and the reassignment of the

responsibilities of the office by statute. The committee offers no recommendation on the status or distribution of the statutory responsibilities of the office but refers the Legislature to the excellent studies of executive organization in Minnesota outlined above.

VII. OTHER CONSTITUTIONAL BOARDS AND COMMISSIONS

Since adoption of the committee's recommendations as reported above would largely eliminate the members of four constitutionally created boards and commissions and since the committee is not in a position to recommend abolishment of the boards and commissions themselves, the following recommendations are made:

A. Pardon Board (Article V, Sec.4)

When the original state constitution was adopted in 1857, the governor had the sole power to "grant reprieves and pardons after conviction for offenses against the state." The present pardon board consisting of the governor, attorney general, and chief justice was created by a constitutional amendment approved in 1896.

As a member of the present pardon board, Chief Justice Oscar R. Knutson states in a letter to the committee:

> "If the attorney general is to be eliminated from the pardon board, it probably would be best to go back to the original constitutional provision and have the pardoning power rest in the governor alone. As a matter of fact, historically, the pardoning power has been considered mainly an executive function. I suppose if anyone is to be eliminated, it should be the chief justice of the supreme court, as pardoning is really not a judicial function. It is the court's responsibility to determine whether a person has had a fair trial, but after a case has been affirmed by the supreme court it becomes somewhat difficult for the chief justice to pass on an application for a pardon or a reprieve."

The committee is included to agree with the chief justice and recommends that the board of pardons be deleted from the Constitution

and that the governor be given the sole power of pardon, subject to procedures established by the Legislature.

B. State Board of Investment (Article VIII, Sec.4)

The committee recommends that the state board of investment be retained in the Constitution but that its membership be established by law. The state board of investment presently consists of the governor, auditor, secretary of state, treasurer, and attorney general.

C. State Land Exchange Commission (Article VIII, Sec.7)

The committee recommends that the state land exchange commission be retained in the constitution but that its membership be established by law. The state land exchange commission presently consists of the governor, auditor, and attorney general.

D. State Canvassing Board (Article V, Sec.2)

The committee recommends the deletion of reference to the state canvassing board in the Constitution. The committee also recommends to the Commission's Bill of Rights Committee the addition of a new section to Article VII authorizing the Legislature to provide for the administration of elections and the canvassing of election returns.

VIII POWERS OF THE GOVERNOR

Generally speaking, the committee has no objection to the grant of powers to the governor provided in Article V, Sec. 4. Those powers are presently spelled out as follows:

> Powers and duties of governor. Sec.4. The governor shall communicate by message to each session of the legislature such information touching the state and condition of the country as he may deem expedient. He shall be commander-in-chief of the military and naval forces, and may call out such forces to execute the laws, suppress insurrection and repel invasion. He may require the opinion, in writing, of the principal officer in each of the executive departments upon any

subject relating to the duties of their respective offices; and he shall have power, in conjunction with the board of pardons, of which the governor shall be ex officio a member, and the other members of which shall consist of the attorney general of the State of Minnesota and the chief justice of the supreme court of the State of Minnesota, and whose powers and duties shall be defined and regulated by law, to grant reprieves and pardons after conviction for offenses against the State, except in cases of impeachment. He shall have power, by and with the advice, and consent of the Senate, to appoint notaries public, and such other officers as may be provided by law. He shall have power to appoint commissioners to take the acknowledgment of deeds or other instruments in writing, to be used in the State. He shall have a negative upon all laws passed by the legislature, under such rules and limitations as are in this Constitution prescribed. He may on extraordinary occasions convene both houses of the legislature. He shall take care that the laws be faithfully executed, fill any vacancy that may occur in the office of secretary of state, treasurer, auditor, attorney general, and such other state and district offices as may be hereafter created by law, until the end of the term for which the person who had vacated the office was elected, or the first Monday in January following the next general election whichever is sooner, and until their successors are chosen and qualified.

With the deletion of the attorney general, lieutenant governor, auditor, secretary of state, and treasurer as outlined in prior sections and with the governor authorized to appoint the officers to whom the responsibilities of the deleted offices are given, it is the hope of the committee that Minnesota will have an efficient, responsive and visible state government equipped to handle properly the problems of an increasingly complex society.

Under such a system the continuing vitality of state government depends on two important factors. One, of course, is the ability of the voters to choose a chief executive who is worthy of the responsibilities delegated to him under such a system. We have every confidence in the ability of the voters of our state to make such a choice.

The second factor is that the structure of state government be flexible enough to adapt to changing demands for delivery of services

to the state's citizens. To that end, the Model State Constitution and several of the newer state constitutions, including that of Illinois, have provided specific constitutional language to authorize the governor to undertake major executive reorganization without the action of the Legislature. Conditions for such reorganization are set out in the Model State Constitution as follows:

> Section 5.06. Administrative Departments... but the governor may make such changes in the allocation of offices, agencies and instrumentalities, and in the allocation of such functions, powers and duties, as he considers necessary for efficient administration. If such changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the legislature while it is in session, and shall become effective, and shall have the force of law, sixty days after submission, or at the close of the session, whichever is sooner, unless specifically modified or disapproved by a resolution concurred in by a majority of all the members of each house.

A similar statutory recommendation was made to the 1969 session of the Minnesota Legislature by then Governor Harold LeVander in a special message. The Legislature acted on the recommendation and even went beyond it to provide in MS 16.125 and 16.13 that the governor may transfer any function, person, or appropriation deemed advisable for purposes of effecting economy and efficiency in state government. The provisions appear to give the governor the right to implement executive reorganization without waiting for the legislative session and without legislative approval, a reform recommended in the above-quoted section from the Model State Constitution. (Section 16.125 does require that transfers of functions or appropriations be reported to the Senate Finance and House Appropriations Committees.)

To date, there has been no constitutional challenge to the delegation of such authroity to the governor and the committee sees nothing in the present Constitution to prevent such a delegation.

Until and unless such a successful challenge is made to the governor's reorganization powers as outlined above, the committee recommends no specific constitutional authorization of that authority. Rather, the committee recommends the further use of present executive reorganization powers to continually evaluate and update the delivery of state government services to Minnesotans.

IX IMPEACHMENT AND REMOVAL PROVISIONS

A. ISSUE

Should present provisions in the Constitution spelling out the practice and procedures for impeachment and removal be altered? If so, in what manner?

B. PRESENT CONSTITUTIONAL LANGUAGE

1) Impeachment:

Article XIII of the Constitution contains most provisions regarding impeachment. Section 1 of the article states that the governor, secretary of state, treasurer, auditor, attorney general, and judges of the state supreme court and district courts may be impeached for corruption in office and crimes and misdemeanors. Conviction results in removal from office and a ban on future office-holding in the state. Impeachment does not preclude normal criminal actions for crimes. Under Section 3, an officer may not exercise his duties during an impeachment trial. Section 5 provides that there must be 20 days notice to the accused official before an impeachment trial may begin. The only reference to the lieutenant governor in Article XIII is in Section 4, where it is provided that the lieutenant governor may not act as a member of the court of impeachment against the governor.

Section 14 of Article IV provides that the House of Representatives has the sole power to impeach by a majority vote of all elected members. As is the case with the Congress, the State Senate tries the impeachment, a two-thirds vote being necessary for conviction.

2) Removal:

Under Section 2 of Article XIII, the Legislature may provide for the removal of inferior officers for malfeasance or nonfeasance in performance of their duties. The Legislature has provided for the removal of officials appointed by the governor whose term of service is not prescribed by law in MS 4.04. Probate judges, court clerks, various county officials and others may be removed for malfeasance or nonfeasance after notice and hearing under MS 351.03.

C. BACKGROUND

1) Impeachment:

Impeachments are understandably rare, in states as well as on a national level. As William Anderson relates in his History of the Constitution of Minnesota (1927), the state treasurer, William Seeger, was impeached and convicted in 1873 for mishandling state funds. The experience apparently started a movement to strengthen the Constitution as regards handling of state funds; the result was adoption in 1873 of the present language of Article IX, Sec. 12.

In 1878, a district judge, Sherman Page, was impeached by the House of Representatives upon a petition by citizens of Mower County. The proceedings took an incredible amount of the Legislature's time, from February through June of that year. Judge Page was charged by the house with eight counts of malicious ill-treatment of individuals, one of insult to the county grand jury, and one of "offensive demeaner"

toward officers of the county and the court. Apparently, the motivation for the impeachment rose out of some vigorous prosecutions Page had instigated while a county prosecutor. As it turned out, none of the ten charges were sustained in the Senate tiral, although several of them did get a majority vote. Judge Page attempted to gain reelection in 1879, but failed and eventually moved to California.

Finally, there was the impeachment of Judge Eugene St. Julien Cox in 1881-82. Judge Cox was impeached for drunkenness and immoral behavior. After trials and hearings lasting five months, Judge Cox was convicted on seven of the twenty charges, by a bare two-thirds vote (25 to 12). The evidence covered nearly 1,700 pages; 60 witnesses appeared for the House managers and over 100 for the defense. The cost of the impeachment and trial was reported to be ten times as much as the salary of the chief justice of the state supreme court and proposals were made to change the procedure. Judge Cox's friends obtained an expungement resolution in 1891, but, like Judge Page, he found it desirable to emigrate to California.

2) Removal:

Removal, as provided by the Legislature, has been used more frequently than impeachment. Since the courts participate in removal, there has been more interpretation of removal provisions than of impeachment provisions over which the Senate presides. (For a detailed discussion of removal in Minnesota through 1936, see E. Jennings, "Removal from Public Office in Minnesota, 20 Minn.Law Review 721,(1936).)

D. COMMITTEE CONSIDERATION

Generally, the committee believes that the impeachment power should be retained in its present form. Impeachment is an extraordinary

and rare remedy for punishing political revials and is rarely used to remove any officer who has committed a crime. In Minnesota's history, only one of the three officers impeached (Seeger) seemed to deserve it and his case would now not be handled primarily under Article XIII, but rather under provisions of Article IX, Sec. 12. The other two cases of impeachment, one ending in conviction and one not, seem to have been politically motivated.

The committee does, however, believe that the lieutenant governor should be subject to impeachment on the same basis as the governor.

Stylistic changes might be in order to unify the impeachment provisions within one article. In line with other recommendations of this committee, reference to certain constitutional officers should be deleted. To provide for the possible addition of a constitutional or statutory intermediate court of appeals, specific reference to "judges of the supreme and district courts" might be replaced by a more general reference to "judges" in Sec. 1. (Under a proposed constitutional amendment appearing on the ballot this November, the Legislature may provide for the discipline and removal of all judges. In light of the cost of impeachment proceedings, such a legislatively established procedure for removal of judges would be a desirable alternative to impeachment.)

E. COMMITTEE RECOMMENDATIONS

The committee recommends no change in the general power of the Legislature to impeach constitutional officers and judges, except that the committee recommends the addition of the lieutenant governor to those officers who may be impeached.

The committee recommends to the Commission's Structure and Form Committee the transfer of Article IX, Sec. 14 to Article XIII and an appropriate renumbering of present sections in Article XIII.

The committee recommends deletion of reference to the attorney general, secretary of state, treasurer, and auditor and specific reference to supreme and district court judges in present section 1. Under the new language, only the governor and judges could be impeached.

The committee recommends deletion of Article XIII, Sec.4, which provides that the lieutenant governor shall not participate in the impeachment trial of the governor. (Under another constitutional amendment on this November's ballot, the lieutenant governor would not be the presiding officer of the Senate, making this present section somewhat confusing and contradictory.)

X. SUMMARY OF RECOMMENDATIONS

The committee recommends adoption of Constitutional Amendment #2 appearing on the November 7 election ballot which would require the governor and lieutenant governor to run on a joint election ballot; would allow the Legislature to define the compensation of the lieutenant governor;and would remove the lieutenant governor as the presiding officer of the State Senate. The committee further urges the prompt implementation of the spirit of the amendment by the Legislature through reasonable adjustment of the compensation of the lieutenant governor and a reasonable alteration in the duties and responsibilities of the office.

The committee recommends the removal of the elective attorney general from the Constitution. The committee recommends that the

constitutional responsibilities now held by the attorney general be redesignated by the Legislature to (an) official(s) appointed by the governor. The committee offers no specific recommendations for statutory changes in this regard but directs the Commission's attention to the excellent work done by past studies of executive organization in Minnesota.

The committee recommends removal of the offices of secretary of state, auditor, and treasurer from the Constitution and the reassignment by the Legislature of the constitutional responsibilities of these offices. The committee offers no recommendation on the status or distribution of the statutory responsibilities of the offices, but refers the Legislature to the excellent studies of executive organization in Minnesota.

The committee recommends that the board of pardons be deleted from the Constitution and that the governor be given the sole power of pardon subject to procedures established by the Legislature.

The committee recommends that the State Land Exchange Commission and State Board of Investment be retained in the Constitution but that their memberships be established by law.

The committee recommends deletion of reference to the state canvassing board in the Constitution. The committee also recommends to the Commission's Bill of Rights Committee the addition of a new section to Article VII authorizing the Legislature to provide for the administration of elections and the canvassing of election returns.

The committee recommends no change in the general power of the Legislature to impeach constitutional officers and judges except that the lieutenant governor be added to the list of those officers who may be impeached.

The committee recommends to the Structure and Form Committee

several stylistic changes and recommends deletion of reference to specific constitutional officers.

XI. DRAFT CONSTITUTIONAL AMENDMENT

A bill for an act

proposing an amendment to the Minnesota Constitution, Article IV, Sections 5, 11, and 32(b). Article V, Article VIII, Sections 4 and 7, Article IX, Section 6, Subdivisions 3 and 4 and Section 11, Article XV, Section 4; and repealing Article XIII, Section 4; removing certain offices from the constitution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. The following amendment to the Minnesota Constitution, changing Article IV, Sections 5, 11 and 32(b), Article VIII, Sections 4 and 7, Article IX, Section 6, Subdivisions 3 and 4, and Section 11, Article XIII, Sections 1 and 4, and Article XV, Section 4; repealing the present Article V: and creating a new Article V is proposed to the people. If the amendment is adopted Article IV, Section 5, will read as follows:

Sec. 5. ~~The House of Representatives~~ Each house shall elect its presiding officer and ~~the Senate and House of Representatives shall elect~~ such other officers as may be provided by law; they shall keep journals of their proceedings, and from time to time publish the same, and the yeas and nays, when taken on any question, shall be entered on such journals.

Article IV, Section 11, will read as follows:

Sec. 11. Every bill which shall have passed the Senate and the House of Representatives, in conformity to the rules of each house and the joint rules of the two houses, shall, before it becomes a law, be presented to the governor of the state. If he approves, he shall sign and deposit it ~~in the office of secretary of state for preservation~~ as provided by law, and notify the house where it originated of the fact. But if not, he shall return it, with his

objections, to the house in which it shall have originated; when such objections shall be entered at large on the journal of the same, and the house shall proceed to reconsider the bill. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if it be approved by two-thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each house, respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature, by adjournment within that time, prevents its return. Bills may be presented to the governor during the three days following the day of the final adjournment of the Legislature and the Legislature may prescribe the method of performing the acts necessary to present bills to the governor after adjournment. The governor may approve, sign and file ~~in the office of the secretary of state~~ as provided by law, within 14 days after the adjournment of the legislature, any act passed during the last three days of the session, and the same shall become a law. If any bill passed during the last three days of the session is not signed and filed within 14 days after the adjournment, it shall not become a law.

If any bill presented to the governor contain several items of appropriation of money, he may object to one or more of such items, while approving of the other portion of the bill. In such case he shall append to the bill, at the time of signint it, a statement of the items to which he objects, and the appropriation

so objected to shall not take effect. If the legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If, on reconsideration, one or more of such items be approved by two-thirds of the members elected to each house, the same shall be a part of the law, notwithstanding the objections of the governor. All the provisions of this section, in relation to bills not approved by the governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.

Article IV, Section 32(b) will read as follows:

Sec. 32.(b) All lands donated to the State of Minnesota for the purpose of internal improvement, under the eighth section of the act of Congress, approved September fourth, eighteen hundred and forty-one, being "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," shall be appraised and sold, in the same manner and by the same officers, and the minimum price shall be the same as is provided by law for the appraisement and sale of the school lands, under the provisions of title one (1), chapter thirty-eight, of the General Statutes, except the modifications hereinafter mentioned. All moneys derived from the sales of said lands shall be invested in the bonds of the United States, or of the State of Minnesota issued since 1860; and the moneys so invested shall constitute the Internal Improvement Land Fund of the State. All moneys received by the county treasurer under the provisions of title one (1), chapter thirty-eight (38), aforesaid, derived from the sale of internal improvement lands, shall be held at all times subject to ~~the~~ order and direction ~~of the state~~

~~treasurer~~ in accordance with law, for the benefit of the fund to which it belongs; and on the fifteenth day of June in each year, and at such other times as he may be requested ~~so-to-do-by-the-state treasurer~~ in accordance with law, he shall pay over to the ~~said~~ state ~~treasurer~~ all moneys received on account of such fund.

The bonds purchased in accordance with this amendment shall be transferable only upon the order of the governor, and on each bond shall be written "Minnesota Internal Improvement Land Fund of the State, transferable only on the order of the governor."

The principal sum from all sales of internal improvement lands shall not be reduced by any charges or costs of officers, by fees, or by any other means whatever; and section fifty (50), of title one (1), chapter thirty-eight (38), of the General Statutes, shall not be applicable to the provisions of this amendment, and wherever the words "school lands" are used in said title, it shall read as applicable to this amendment, "Internal Improvement Lands."

The force of this amendment shall be to authorize the sale of the internal improvement lands, without further legislative enactment.

The new Article V will read as follows:

ARTICLE V

Section 1. The executive power of the state is vested in a governor and a lieutenant governor who shall be chosen by a single vote applying to both offices, in a manner prescribed by law.

Sec. 2. The term of office for the governor and lieutenant governor shall be four years, and until their successors are chosen and qualified. They shall have attained the age of 25 years and shall have been bona fide residents of the state for one year next preceding their election. They shall be citizens of the United States.

Sec. 3. The governor shall communicate by message to each session of the legislature such information touching the state and condition of the country as he may deem expedient. He shall be commander-in-chief of the military and naval forces, and may call out such forces to execute the laws, suppress insurrection and repel invasion. He may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices; and he shall have power, subject to the procedures prescribed by law, to grant reprieves and pardons after conviction for offenses against the State, except in cases of impeachment. He shall have power, by and with the advice and consent of the Senate, to appoint notaries public, and such other officers as may be provided by law. He shall have power to appoint commissioners to take the acknowledgment of deeds or other instruments in writing, to be used in the State. He shall have a negative upon all laws passed by the Legislature, under such rules and limitations as are in this Constitution prescribed. He may on extraordinary occasions convene both houses of the legislature. He shall take care that the laws be faithfully executed, fill any vacancy that may occur in the state and district offices as may be created by law until the end of the term for which the person who had vacated the office was elected, or the first Monday in January following the next general election whichever is sooner, and until their successors are chosen and qualified.

Sec. 4. The compensation, powers, and duties of the lieutenant governor shall be prescribed by law.

Sec. 5. In case a vacancy should occur, from any cause whatever, in the office of governor, the lieutenant governor shall be governor during such vacancy. In case the governor shall be unable to discharge

the powers and duties of his office, the same shall devolve on the lieutenant governor. The Legislature shall provide by law for the case of the removal, death, resignation, or inability of the governor, governor-elect, lieutenant governor, or lieutenant governor-elect, and may provide by law for the continuity of government in periods of emergency resulting from disasters caused by enemy attack in this state, including but not limited to, succession to the powers and duties of public office and change of the seat of government.

Sec. 6. Each officer created by this article shall, before entering upon his duties, take an oath of affirmation to support the Constitution of the United States and of this State, and faithfully discharge the duties of his office to the best of his judgment and ability.

Article VIII, Sec. 4, will read as follows:

Sec. 4. The permanent school fund of the state shall consist of (a) the proceeds of such lands as are or hereafter may be granted by the United States for the use of schools within each township, (b) the proceeds derived from swamp lands granted to the state, and (c) all cash and investments now or hereafter credited to the permanent school fund and to the swamp land fund. No portion of said lands shall be sold otherwise than at public sale, and in the manner provided by law. All funds arising from the sale or other disposition of such lands, or income accruing in any way before the sale or disposition thereof, shall be credited to the permanent school fund. Within limitations prescribed by law, to secure the maximum return thereon consistent with the maintenance of the perpetuity of the fund, such fund may be invested in: (1) interest bearing fixed income securities

guaranteed in full as to payment of principal and interest by the United States, bonds of the state of Minnesota, or its political subdivisions or agencies, or of other states, but not more than 50 percent of any issue by a political subdivision, shall be purchased; (2) stocks of corporations on which cash dividends have been paid from earnings for five consecutive years or longer immediately prior to purchase, but not more than 20 percent of said fund shall be invested therein at any given time, nor more than five percent of the voting stock of any one corporation be owned; (3) bonds of corporations whose earnings have been at least three times the interest requirements on outstanding bonds for five consecutive years or longer immediately prior to purchase, but not more than 40 percent of said fund shall be invested in corporate bonds at any given time. The percentages referred to above shall be computed using the cost price of the stocks or bonds. The principal of the permanent school fund shall be perpetual and inviolate forever; provided, that this shall not prevent the sale of any public or private stocks or bonds at less than the cost thereof to the fund; however, all losses not offset by all gains, shall be repaid to the fund from the interest and dividends earned thereafter. The net interest shall be distributed to the different school districts of the state in proportion to the number of scholars in each district between the ages of five and twenty-one years. No such investment shall be made until approved by a board of investment consisting of the governor~~, the state auditor, the state treasurer, the secretary of state, and the attorney general,~~ and other members provided by law who are hereby constituted a state board of investment for the purpose of administering and directing the investment of all state funds.

The state board of investment shall not permit the fund to be used for the underwriting or direct purchase of municipal securities from the issuer or his agent.

Article VIII, Section 7, will read as follows:

Sec. 7. Any of the public lands of the state, including lands held in trust for any purpose, may, with the unanimous approval of a commission consisting of the governor~~, the attorney general and the state auditor,~~ and other members provided by law be exchanged for lands of the United States and/or privately owned lands in such manner as the legislature may provide, and the lands so acquired shall be subject to the trust, if any, to which the lands exchanged therefor were subject, and the state shall reserve all mineral and water power rights in lands so transferred by the state.

Article IX, Section 6, Subdivision 3, will read as follows:

Subd. 3. As authorized by law, certificates of indebtedness may be issued during each biennium, commencing on July 1 in each odd-numbered year and ending on and including June 30 in the next odd-numbered year, in anticipation of the collection of taxes levied for and other revenues appropriated to any fund of the state for expenditure during that biennium.

No such certificates shall be issued with respect to any fund when the amount thereof with interest thereon to maturity, added to the then outstanding certificates against the same fund and interest thereon to maturity, will exceed the then unexpended balance of all moneys which will be credited to that fund during the biennium under existing laws; except that the maturities of any such certificates may be extended by refunding to a date not later than December 1 of the first full calendar year following the biennium in which such

certificates were issued. If moneys on hand in any fund are not sufficient to pay all non-refunding certificates of indebtedness issued on such fund during any biennium and all certificates refunding the same, plus interest thereon, which are outstanding on December 1 immediately following the close of such biennium, the ~~state auditor~~ governor shall levy upon all taxable property in the state a tax collectible in the then ensuing year sufficient to pay the same on or before December 1 of such ensuing year, with interest to the date or dates of payment.

Article IX, Section 6, Subdivision 4, will read as follows:

Subd. 4. Public debt other than certificates of indebtedness authorized in subdivision 3 shall be evidenced by the issuance of the bonds of this state. All bonds issued under the provisions of this section shall mature within not more than 20 years from their respective dates of issue, and each law authorizing the issuance of such bonds shall distinctly specify the purpose or purposes thereof and the maximum amount of the proceeds authorized to be expended for each purpose. The state ~~treasurer~~ shall maintain a separate and special state bond fund on ~~his~~ its official books and records, and when the full faith and cr-dit of the state has been pledged for the payment of such bonds the ~~state auditor~~ governor shall levy each year on all taxable property within the state a tax sufficient, with the balance then on hand in said fund, to pay all principal and interest on state bonds issued under the provisions of this section, due and to become due within the then ensuing year and to and including July 1 in the second ensuing year. The legislature may by law appropriate funds from any source to the state bond fund, and the amount of moneys actually received and on hand pursuant to such

appropriations prior to the levy of such tax in any year, shall be used to reduce the amount of tax otherwise required to be levied.

Article IX, Section 11, will read as follows:

Sec. 11. There shall be published ~~by the treasurer,~~ in at least one newspaper printed at the seat of government, during the first week in January in each year, and in the next volume of the acts of the legislature, detailed statements of all moneys drawn from the treasury during the preceding year, for what purpose and to whom paid, and by what law authorized; and also of all moneys received, and by what authority and from whom.

Article XIII, Section 1, will read as follows:

Section 1. The governor, lieutenant governor, ~~secretary of state, treasurer, auditor, attorney general,~~ and ~~the~~ judges ~~of the supreme and district courts,~~ may be impeached for corrupt conduct in office, or for crimes and misdemeanors; but judgment in such case shall not extend further than to removal from office and disqualification to hold office of honor, trust or profit in this State. The party convicted thereof shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Article XIII, Section 4 will be repealed:

Article XV, Section 4, will read as follows:

Sec. 4. There shall be a seal of the State~~, which shall be kept by the secretary of state, and be~~ used ~~by him officially~~ as provided by law, and ~~shall be~~ called the great seal of the State of Minnesota~~, and~~ . It shall be attached to all the official acts of the governor (his signature to acts and resolves of the legislature excepted) requiring authentication. The legislature shall

provide for an appropriate device and motto for said seal.

The present Article V will be repealed.

Sec. 2. The proposed amendment shall be submitted to the people at the 1974 general election. The question proposed shall be:

"Shall the Minnesota Constitution be amended to remove the secretary of state, the state auditor, the state treasurer and the attorney general from the Constitution?

Yes _____

No _____"

XII. BIBLIOGRAPHY

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Model State Constitution, National Municipal League, Sixth Edition (Revised), 1970.

Internal Staff Research

"Staff Memorandum on Constitutional Officers in the Fifty States" by Stan Ulrich, February 7, 1972

"Staff Memorandum on the Legislative History of Article V" by Stan Ulrich, February 26, 1972

"Staff Memorandum on Impeachment and Removal of Officers" by Stan Ulrich, May 22, 1972

Testimony and Letters to the Committee

Testimony from June 1, 1972 hearing:

State Treasurer Val Bjornson
State Auditor Rolland F. Hatfield
Former Lieutenant Governor James B. Goetz
Former Secretary of State Joseph L. Donovan

Letters to the Committee:

Attorney General Warren Spannaus, March 31, 1972
Congressman Bill Frenzel, November 10, 1971, April 19, 1972
May 1, 1972
Secretary of State Arlen I. Erdahl, May 25, 1972
Governor Wendell R. Anderson, March 27, 1972
State Treasurer Val Bjornson, November 9, 1971; March 29, 1972
June 28, 1972
Kenneth A. Mitchell, Minneapolis Attorney, January 6, 1972
Thorwald H. Anderson, Jr., U.S. Attorney's Office, Minneapolis,
November 5, 1971

Lawrence A. Wallin, Department of Political Science, Hibbing State Junior College, December 13, 1971
Rudolph Hanson, Albert Lea, Attorney, December 18, 1971
Rev. Alton Motter, Executive Director, Minnesota Council of Churches, December 20, 1971
Stanley G. Peskar, Assistant Counsel, League of Minnesota Municipalities, November 23, 1971
District Judge Lindsay G. Arthur, Minneapolis, November 4, 1971

MINUTES OF THE FINANCE COMMITTEE

OF THE CONSTITUTIONAL STUDY COMMISSION

HELD IN MOORHEAD, MINNESOTA, MAY 4, 1972

Committee Members Present:

Representative Fitzsimons, Chairman
Senator Davies
Representative Lindstrom
Mr. Scribner
Senator Tennessen

Others Present:

Mr. Durenberger
Mr. Steven Hedges
Mrs. Kane
Professor Morrison

Representative Fitzsimons recommended that the committee hold a hearing and invite Mr. Arthur Whitney to present his views on the financial provisions of the Constitution, especially on internal improvements.

Following discussion it was agreed that Mr. Whitney be invited to a hearing of the committee, together with Mr. Hatfield, State Auditor, Mr. Bjornson, State Treasurer, Mr. Roemer, Commissioner of Taxation, Mr. Blixt, Executive Secretary, State Board of Investment, Mr. John Haynes, Governor Anderson's Office, and Mr. Roger Baker, Department of Economic Development. Mr. Scribner suggested that the hearing also consider the problem of the income tax and the "delegation" problems raised by the Wallace case.

A meeting was scheduled for Thursday, May 18, 1972, at 2:00 p.m. at the State Capitol.

Representative Lindstrom made a statement advocating the repeal of Article 34, Section 32a, pertaining to gross earnings taxation of railroads.

Senator Tennessen suggested that hearings on that issue be combined with Transportation hearings.

It was agreed that the hearing take place on Thursday, June 15, 1972, at the State Capitol.

Meeting was adjourned.

Reported by Steven Hedges, Researcher

FINANCE COMMITTEE HEARING
Room 21, State Capitol, May 18 2 P.M.
Present: Chairman Fitzsimons, Sen.Tennessen, Sen.Davies, Mr. Evenson, Rep.Lindstrom, B.Rosas, Sec.

Chairman Fitzsimons called the meeting to order explaining the meeting will enable the Committee to get final recommendations from Mr. Art Whitney, Mr. Robert Blixt, Mr. Val Bjornson, and Mr. Rolland Hatfield concerning changes in Article IX. He requested that Rep. McCauley's letter of January 11th, be made a part of the record and that he be so informed. He stated the hearings of this Committee will be complete with this meeting and called attention to the research material submitted from the researcher, Steven Hedges, dealing with Article IX.

The recommendations in Mr. Whitney's letter of November 22, 1971 to Revisor Joseph Bright with regard to the finance provisions in the Constitution were brought to the attention of the Committee and Mr. Whitney was called on for further comment. He stated he is in the business of giving legal approving opinions on special bond issues including issuing bonds to the State of Minnesota and has no specific section or amendment to recommend. He recommended the following four finance provisions in Article IX to be considered for review:

Sec. 1, requirement that taxes should be collected for public purposes
Sec. 5, participation in works of internal improvement
Sec. 6, limitation on purposes and methods of contracting public debt.
Sec.10, loaning of its credit by state.

He specified Sec. 5 as the most vexing and suggested repeal as the simplest method of handling the problem, although pointing out that one problem could still arise under Sec. 10 which forbids loaning of state credit with certain exceptions.

Val Bjornson, State Treasurer, stated he feels the state should not limit the interest rates on bonds in the Constitution. He recommended elimination of Sec. 11 of Article IX, publication of every receipt and disbursement of the state in a newspaper, citing that the estimates to fulfill this amounted to between four and thirteen million dollars. This procedure has not been followed, he added.

Arthur Roemer, Commissioner of Taxation, spoke regarding Section 5 of Article IX and Section 9 of Article XVI, recommending greater flexibility be allowed in the expenditure of auto license fees and gasoline proceeds. He stated there has been much litigation in recent years over constitutionally dedicated funds and suggested the Constitution be changed to permit such funds to be used for any type of transportation purposes.

He further recommended revision of Article IX, Section 1 so that the Legislature can tax incomes on a percentage of Federal income tax basis and permit collection of State income taxes by the Internal Revenue Service. He suggested Section 1 spell out specifically property exempt from taxation limited to schools and churches with other exemptions determined by the Legislature. He further recommended that Article IV, Section 32a, limiting the rate of gross earnings on railroads to 5% be removed thereby permitting the Legislature to establish whatever rate they determine from time to time.

Jerry Hagstrom, added further comments regarding finance provisions in the Constitution stating that in general he is concerned with greater flexibility to define internal improvements.

James Solem, State Planning Agency, pointed out the necessity of looking over the state's needs in the next few years to make the best use of the tax dollars, which whether local or state, come from the same taxpayers. He stated Section 5 of Article IX impedes the effectiveness of state credit.

The meeting adjourned at 4:30 P.M.

MINNESOTA CONSTITUTIONAL STUDY COMMISSION
G-19E Administration Building / St. Paul, Minnesota 55155
(612) 296-6683

REPORT OF THE

FINANCE COMMITTEE

TO THE

CONSTITUTIONAL STUDY COMMISSION

ON

NOVEMBER 21, 1972

* * * * *

REPRESENTATIVE RICHARD W. FITZSIMONS, CHAIRMAN
SENATOR JACK DAVIES
REPRESENTATIVE ERNEST A. LINDSTROM
MR. DUANE C. SCRIBNER
SENATOR ROBERT J. TENNESSEN

* * * * *

TABLE OF CONTENTS

I. INTRODUCTION

The Finance Committee submits herewith recommendations for changes in the Minnesota Constitution. We have approached our task as an effort to identify those issues which cause problems in the functioning of the state financial system. We are proposing a number of separate amendments to the constitutional provisions relating to financial matters, but are not proposing a comprehensive redrafting of the entire article.

The Finance Committee consists of Representative Richard Fitzsimons, chairman, Senator Jack Davies, Representative Ernest Lindstrom, Mr. Duane Scribner, and Senator Robert Tennessen. The committee received valuable assistance from Mr. Steve Hedges and Mr. Michael Sieben of the University of Minnesota Law School. The committee also wishes to express appreciation to Mr. Arthur Whitney of Minneapolis, for assistance in preparation of a draft bill, which is submitted in Part III of this report.

This committee has worked closely with other committees of the Commission, particularly the Transportation Committee regarding highway-user taxes and the railroad gross earnings tax, and with the Education and Natural Resources Committees regarding the trust funds. We are not making recommendations regarding the highway-user tax, believing that to be the province of the Transportation Committee.

Certain recommendations of the Structure and Form Committee and the Executive Branch Committee will also have an impact upon our recommendations.

II. THE "PIGGYBACK" INCOME TAX

Recommendation

The committee recommends amendment of Article IX, Sec. 1, to permit the State to levy taxes computed as a percentage of federal taxes or based on federal taxable income or other terms defined by federal law.

Comment

In levying state income taxes, the Legislature has relied upon the definition of terms which appear in the federal income tax laws, e.g., "adjusted gross income." This method of referring to federal law saves the Legislature the difficulty of adopting and revising the full text of all provisions included in the Internal Revenue Code. It saves the taxpayer the difficulty of computing his taxes twice, once using a federal formula and once using a state formula.

In 1971, the Minnesota Supreme Court ruled that the Legislature may adopt the federal law as the basis for state tax law, but that it may adopt that law only as it exists at a particular moment in time. Wallace v. Commissioner of Taxation, 184 N.W. 2d 588. It ruled that the Legislature could not prospectively adopt future amendments and interpretations of the federal tax law. Hence the advantages of using the federal tax definitions as the basis for state taxes continues only so long as the federal law remains unchanged. As soon as there is a change in federal law, the Legislature must reconsider and

readopt the new federal definitions. The Legislature has, in fact, followed this course and will probably continue to do so. Each session, it amends the State Tax Code so that all references are to the most recent edition of the Internal Revenue Code.

The Supreme Court decision was based on the language of Article IX, Sec. 1, prohibiting the "contracting away" of the taxing power.

We believe that the use of federal tax definitions is a sensible way to operate a modern state revenue system. We are not concerned that the delegation to Congress of the power to make tax definitions will violate the rights of the citizens of Minnesota. In the first place, Congress is a responsible political body; we are not "contracting away" the power to tax to some private person or company. In the second place, the Legislature would retain the power to repeal the delegation of power, if it became dissatisfied with definitions made by Congress.

Hence we recommend that the Legislature be permitted to use federal tax definitions in administering state taxes, without the need for periodic readoption of the Internal Revenue Code.

III. STATE BORROWING AND PUBLIC IMPROVEMENTS

The Finance Committee recommends substantial changes in the limitations on state borrowing and on the kinds of improvements for which state funds may be expended. A constitutional amendment to accomplish these purposes follows. Since the matter is highly technical, we are setting forth the amendment in full, then providing an explanation of it under separate headings. In summary, our proposal would accomplish the following results.

(a) remove the prohibition on state expenditures for "internal improvements" and replace it with a requirement that state expenditures be for a "public purpose;"

(b) simplify and consolidate the provisions relating to the contracting of public debt by the State;

(c) spell out those cases in which the State could guarantee the payment of loans made to its political subdivisions or agencies and the amount of such guarantee.

As in other financial matters, careful scrutiny of every word and detail is important. We urge those studying this proposal to examine closely the text of our proposal, rather than to rely upon the summary of it.

TEXT OF PROPOSAL: (New language is underlined. Language to be deleted is stricken out.)

A bill for an act

proposing an amendment to the Constitution of the State of Minnesota, amending Article IX, Sections 6 and 10, Article XVI, Section 12, and Article XIX, Section 2, and repealing Article IX, Sections 5, 7, and 11 and Article XVII, for the purpose of redefining and clarifying the purposes and methods for the use of state credit including the incurring of state debt, repealing the prohibition against state participation in works of internal improvements, and eliminating duplicate and obsolete provisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. An amendment to the Constitution of the State of Minnesota is proposed to the people of the State for their approval or rejection, under which amendment, if adopted:

(a) Article IX, Section 6 shall be amended to read as follows:

POWER TO CONTRACT ~~PUBLIC DEBTS~~ STATE DEBT; PURPOSES; CERTIFICATES OF INDEBTEDNESS; BONDS. Sec. 6. Subdivision 1. The state may contract ~~public debts~~ debt, for the payment of which its full faith~~,~~ and credit~~,~~ and taxing powers may be pledged, at ~~such~~ the times and in ~~such~~ the manner ~~as shall be~~ authorized by law, but only for the purposes and subject to the conditions stated in this section. State debt includes any obligation payable directly, in whole or in part, from a tax of state-wide application on any class of property, income, transaction or privilege, but does not include any obligation which is payable from revenues other than taxes, or any guaranty or insurance of the payment of obligations of state agencies or subdivisions, except in the amount of any state bonds actually issued to provide funds for such payment.

Subd. 2. ~~Public~~ State debt may be contracted:

(a) for the acquisition and betterment of ~~public~~ land, easements, and other ~~public~~ improvements of a capital nature, including purchase, condemnation, site preparation, construction, reconstruction, improvement, extension, replacement, restoration, repair, remodeling, and furnishing ~~and~~;

(b) to provide ~~moneys~~ money to be appropriated or loaned to any agency or ~~political~~ subdivision of the state for such ~~purposes~~ purpose; ~~provided any law authorizing such debt is adopted by the vote of at least three fifths of the members of each branch of the legislature;~~

~~(b) as authorized in any other section or article of this Constitution;~~

(c) to create or maintain a fund to guarantee or insure the payment of obligations incurred by any agency or subdivision of the state for such purpose;

~~(c)~~ (d) for temporary borrowing as authorized in subdivision 3;

~~(d)~~ (e) for refunding ~~outstanding bonds~~ obligations of the state or any of its agencies or subdivisions, whether or not the full faith and credit of the state has been pledged for the payment of ~~such bonds~~ the obligations refunded; ~~and for refunding certificates of indebtedness authorized by the legislature prior to January 1, 1963.~~

(f) for repelling invasion or suppressing insurrection in time of war;

(g) for promoting forestation and preventing and abating forest fires, including the compulsory clearing and improving of wild lands whether public or private.

Subd. 3. As authorized by law, certificates of indebtedness may be issued during ~~each~~ a biennium~~, commencing on July 1 in each odd-numbered year and ending on and including June 30 in the next~~

~~odd-numbered-year,~~ in anticipation of the collection of taxes ~~levied~~ for and other revenues appropriated to any fund of the state for expenditure during that biennium. No such certificates shall be issued ~~with-respect-to-any-fund-when-the~~ in an amount ~~thereof~~ which wich interest thereon to maturity, added to the then outstanding certificates against the ~~same~~ fund and interest thereon to maturity, will exceed the then unexpended balance of ~~all-moneys-which-will be-credited-to-that-fund-during-the-biennium-under-existing-laws, except-that~~ money so appropriated. The maturities of ~~any-such~~ certificates may be extended by refunding to a date not later than December 1 of the first full calendar year following the biennium in which ~~such~~ the certificates were issued. If ~~moneys~~ money on hand in any fund ~~are~~ is not sufficient to pay all non-refunding certificates of indebtedness issued on ~~such~~ the fund during any beinnium and all certificates refunding the same, plus interest thereon, which are outstanding on December 1 immediately following the close of ~~such~~ the biennium, the state auditor shall levy upon all taxable property in the state a tax collectible in the ~~then~~ ensuing year sufficient to pay the same on or before December 1 of ~~such-ensuing~~ that year, with interest to the date or dates of payment.

Subd. 4. ~~Public~~ State debt other than certificates of indebtedness authorized in subdivision 3 shall be evidenced by the issuance of ~~the~~ bonds of this state pursuant to a law adopted by the vote of at least two-thirds of the members of each house of the legislature. ~~All-bonds-issued-under-the-provisions-of-this section-shall-mature-within-not-more-than-20-years-from-their respective-dates-of-issue,-and~~ Each law authorizing the issuance of ~~such~~ bonds shall distinctly specify the

purpose or purposes and the maximum amount and maximum term thereof, and the maximum amount of the proceeds authorized to be expended for each purpose, or the officer or agency by whom and the criteria or conditions upon which the amounts and times of expenditures for each purpose shall be determined. The state treasurer shall maintain a separate and special state bond fund on his official books and records, ~~and when~~ to be used only for the payment of the principal and interest of bonds for which the full faith and credit of the state has been pledged ~~for the payment of such bonds.~~ The state auditor shall levy each year on all taxable property within the state a tax sufficient, with the balance then on hand in ~~said~~ this fund, to pay all such principal and interest on ~~state bonds issued under the provisions of this section~~ due and to become due ~~within the then ensuing year and~~ to and including ~~July~~ January 1 in the second ensuing year. The legislature may ~~by law~~ appropriate funds from any source to the state bond fund, and the amount of ~~moneys~~ such funds actually received and on hand ~~pursuant to such appropriations prior to the levy of such tax~~ in any year, shall be used to reduce the amount of tax otherwise required to be levied.

(b) Article IX, Section 10 shall be amended to read as follows:

CREDIT OF THE STATE LIMITED. Sec.10. Subdivision 1. The credit of the state shall never be given or loaned in aid of any individual association, or corporation, except ~~as hereinafter provided. Not shall there be any further issue of bonds denominated "Minnesota State Railroad Bonds," under what purports to be an amendment to Section Ten (10) of Article nine (9) of the Constitution, adopted April 15th, 1858, which is hereby expunged from the Constitution, saving, excepting and reserving to the State, nevertheless, all rights, remedies and forfeitures accruing under said amendment. Provided, however,~~

~~that for the purpose of developing the agricultural resources of the state, the State may establish and maintain a system of rural credits and thereby loan money and extend credit to the people of the State upon real estate security in such manner and upon such terms and conditions as may be prescribed by law, and to issue and negotiate bonds to provide money to be so loaned. The limit of indebtedness contained in Section 5 of this Article shall not apply to the provisions of this Section, and~~ for a public purpose paramount to any resulting private use or benefit. The purposes for which the credit of the state ~~or the aforesaid municipal subdivision thereof~~ may be given or loaned as ~~herein~~ provided in subdivision 2 are declared to be ~~public~~ such purposes. The existence of such a purpose for any other grant or loan of state credit authorized by law is subject to judicial review; but no decision of this issue in any action shall impair the validity of any conveyance, contract, or obligation made, entered into, or incurred before the date of the decision or the validity or enforceability of any legal rights or duties created by any such conveyance, contract or obligation unless the action is commenced within 90 days after the adoption of the law. Such an action may be commenced by any citizen.

Subd. 2. The state may appropriate money to establish and maintain special funds to guarantee or insure the payment of obligations of state agencies or subdivisions, including any county or town and any municipal, school, or other public corporation, district, council, board, authority, commission, body, or unit of whatsoever kind, exercising any power of state or local government. However, if such obligations are otherwise payable exclusively from revenues other than taxes, the state shall not become obligated to appropriate money or to incur debt for this purpose in excess of the balance from

time to time on hand in the guaranty or insurance fund.

(c) Article XVI, Section 12 shall be amended to read as follows:

BONDS. Sec.12. The legislature may provide ~~by law~~ in accordance with the provisions of Article IX for the issue and sale of the bonds of the state ~~in such amount as may be~~ for capital expenditures necessary to carry out the provisions of ~~section 2 of~~ this article~~; provided, however, that the total amount of such bonds issued and unpaid shall not at any time exceed $150,000,000 par value. The proceeds of the sale of such bonds shall be paid into the trunk highway fund. Any bonds so issued and sold shall mature serially over a term not exceeding 20 years. They shall not be sold for less than par and accrued interest and shall not bear interest at a greater rate than five percent per annum. In case the trunk highway fund shall not be adequate to meet the payment of the principal and interest of the bonds authorized by the legislature as hereinbefore provided, the legislature may provide by law for the taxation of all taxable property of the state in an amount sufficient to meet the deficiency, or it may, in its discretion, appropriate to such fund moneys in the state treasury not otherwise appropriated.~~

(d) Article XIX, Section 2 shall be amended to read as follows:

Sec. 2. For the purpose of carrying on or assisting in carrying on such work it may expend monies, including such monies as the legislature may see fit to appropriate, may incur debts, and may issue and negotiate bonds ~~to provide money therefor. The provisions of Section 5 of Article 9 of the Constitution shall not apply to the provisions of this section, and the purposes for which the credit of the state may be given or loaned as herein provided are declared to be public purposes~~ as provided in Article IX.

(e) Article IX, Sections 5, 7 and 11, and Article XVII are repealed.

Sec. 2. This proposed amendment shall be submitted to the people of the state for their approval or rejection at the general election for the year 1974, in the manner provided by law for the submission of amendments to the Constitution. The votes thereon shall be counted, canvassed, and the results proclaimed as provided by law. The ballots used at the election shall have printed thereon the following:

"Shall Article IX, Sections 5, 7 and 11 and Article XVII of the Constitution of the State of Minnesota be repealed and Article IX, Sections 6 and 10, Article XVI, Section 12, and Article XIX, Section 2 thereof amended to redefine and clarify the purposes and methods for the use of state credit including the incurring of state debt, repealing the prohibition upon state participation in works of internal improvements, and eliminating duplicate and obsolete provisions with reference thereto?

Yes _____

No _____"

A. Internal Improvements

In studying limitations upon state indebtedness and upon the purposes for which the State may expend money, the Finance Committee has reached the conclusion that the pertinent provisions of Article IX require substantial amendment.

There have been two major kinds of restrictions upon state borrowing and expenditures. The first of these is the "internal improvements" provisions of Article IX, Sec. 5, coupled with the "public purpose" doctrine which has been developed independently by the courts. The second is the more detailed provisions of Sec.6, relating to the power to contract debt, coupled with limitations on loaning the credit of the State, contained in Sec.10. A number of other provisions are also affected by our recommendations.

The "internal improvements clause" states that "the State shall never be a party in carrying on works of internal improvements" except in certain circumstances. In its original form, this meant that the State could construct buildings or carry on works which were necessary for governmental purposes, but it could not construct buildings or other structures for nongovernmental purposes. Thus the State could spend money for the capitol, or a prison, or schools and universities, all of which were conceded to be governmental purposes, but it could not engage in building roads, railroads, or industrial facilities, or in developing underpopulated regions of the State.

These limitations fit the requirements of a century in which the prevailing political philosophy called for minimal government. It also may have been the result of legislative log-rolling in other states, familiar to the draftsmen of our Constitution, which granted some communities great public subsidies at the expense of the State as a whole.

The "internal improvements" limitations have been modified in three ways over the century since adoption of the Constitution:

1. The first is specific constitutional amendment. Article XVI (highways), XVII (forest fire prevention), XVIII (forestation), and XIX (airports) were all passed to make it possible for the State to spend money for these purposes. The "internal improvements" language had been thought to prohibit state construction of highways, fire breaks, airports, etc., before these amendments were added. Other qualifications to the rule can be found in Secs. 5 and 10 of Article IX.

2. Relaxation of the stringent requirements of the "internal improvements" rule has also come through judicial interpretation. The courts have been increasingly willing to find that state construction projects have a sufficient governmental purpose to make them exempt from the old rule. Thus only recently the courts have held that state support for construction of sewage facilities is not a work of "internal improvement."

3. The third modification is that the constitutional restriction has been held to apply only to the State, not to units of local government. Thus a municipality could engage in works of "internal improvement," like building an auditorium, without running afoul of this constitutional limitation. Municipalities were, however, restricted by a different, judicially developed doctrine which limits public expenditures to "public purposes."

Thus the "internal improvements clause limits some kinds of state expenditures, or at least brings them into question. It serves as an impediment, making many desired programs subject to question. It seldom serves as a total obstacle, since some manner of providing state finance can normally be found through use of one of the exceptions to the doctrine. The usual result is that

there is some question about the constitutionality of the proposed plan. In order to assure leaders and contractors, it is usually necessary to initiate litigation to test the validity of the program. Consequently, there is frequent delay in the implementation of programs.

The "public purpose" doctrine is related to the "internal improvements" doctrine, but must be kept separate. The public purpose doctrine requires that public expenditures be made only for public purposes. It was developed by the courts; there is no explicit language in the Constitution referring to it, although the courts treat it as a matter of constitutional law. It applies both to state expenditures and to the expenditures of local governmental units.

In many cases application of the public purpose doctrine and the internal improvements doctrine have the same result. In other cases one or the other may apply.

The public purpose doctrine is beset by many of the same ambiguities which trouble the internal improvements doctrine. If both public and private interests will benefit from some public expenditure, is the purpose "public" or "private "? Take, for example, industrial development bonds: private companies and their employees benefit from the creation of municipally financed "industrial parks," but there is also a public benefit in reduction of unemployment. A state scholarship plan would provide a private benefit to the recipients of the scholarships, but also a public benefit in greater educational opportunities in the State. In such cases litigation is frequently necessary before the bonds are salable or the expenditure permissible. Again, needless delays may be caused.

The exact limitations of the public purpose doctrine must be derived from judicial decisions.

Recommendation

Our proposal eliminates completely the "internal improvements" section of the Constitution. This is accomplished by repealing Section 5. We believe that this obsolete doctrine is now so riddled with exceptions as to provide little protection for the State against unwise spending, while providing many impediments to programs which are generally accepted as wise and desirable. Hence our proposed constitutional amendment would repeal Section 5 of Article IX completely.

We would replace the "internal improvements" limitation with a "public purpose" doctrine, which may, indeed, already apply. (See our proposed amendments to Sec. 10.) The "public purpose" doctrine has proven more flexible than the internal improvements language. We believe that it should be written into the Constitution and defined there.

In Sec.10, subd.1, we say that state credit may be given or loaned only for a "public purpose paramount to any resulting private use or benefit."

We also specify that the purpose spelled out in subd.2, the creation of guarantee funds, is a public purpose. We hope that it will not be necessary to have judicial review of every bond issue, since most will fall within the category of cases plainly authorized by the Constitution.

In order to reduce the need for time-consuming and costly litigation testing the validity of bonds, we have included the final two sentences of subd. 1. These shift the burden of instituting litigation to those who actually oppose the bond issue or loan of credit.

Present practice makes it necessary for someone to institute litigation to test the validity of bonds under the internal improvements and public purpose standards before they become marketable. No intelligent investor will lend large sums if there is a reasonable doubt that the investment is legal. Hence a "test case" must be arranged. In one recent instance, the Pollution Control Agency had to sue the State Auditor, in order to obtain a declaration of the validity of bonds which the Legislature authorized. This caused a one year delay and considerable expense.

Our recommendation shifts the burden of challenging the validity of a loan of credit to taxpayers who wish to challenge it. If they believe that an issue is not for a public purpose, they may bring suit within 90 days of enactment of the legislation. The final sentence guarantees them access to the courts, even though the bonds may not yet have been issued. A law suit commenced within this period will determine the validity of any bond issued or credit loaned under the challenged statute, even if the final decision is not rendered until after the 90-day period. After the 90 days, a taxpayer or taxpayers group could still commence litigation but it would not affect the validity of transactions which had already taken place. Such a determination would be prospective only. Thus if no suit was filed in the first 90 days, the State Auditor (or other authorized official) could proceed with the program without waiting for judicial determination in a test case.

If litigation was commenced, there would be real adverse parties, one clearly opposed to the program, one clearly in favor; the courts believe this to be the ideal form for litigation. After the first 90 days, a citizen would retain the right to prevent further loaning of credit or borrowing, but would not have the right

to upset transactions already entered into. We believe that this is fair for protesting taxpayers, yet should simplify and expedite the fiscal business of the State.

B. Power to Contract Debt

The original State Constitution contained a nearly absolute prohibition on state debt. The State was limited to a debt of $200,000. Other sections of the Constitution authorized additional state debt for other limited purposes, for example, to repel invasion (Article IX, Sec.7), to construct highways (Article XVI, Sec.12), to prevent and abate forest fires (Article XVII, Sec.1), to build airports (Article XIX, Sec.2), and to finance the veterans bonus (Article XX, Sec.1).

A constitutional amendment in 1962 removed the ceiling on state debt, but limited the purposes for which it may be issued. With some exceptions long-term state debt may be issued only for capital projects (buildings and other permanent "investments" of the State) and not for current operating expenses. The State may also engage only in short-term borrowing for current expenses. Long-term state debt may be issued only on a vote of three-fifths of each house of the Legislature. (There are some exceptions in which only a majority vote is required.)

Recommendations

Our recommendations on this matter may be found throughout our proposed Sec.6. The proposals are aimed mainly at simplifying the law relating to public borrowing. For a discussion of the proposed amendments to subdivision 1, see the section "Loan of Credit" below. The purposes for which debt may be contracted are spelled out in subdivision 2. The changes are as follows:

Paragraph (a) involves only clarification of existing language.

Paragraph (b) likewise involves only clarification. We are moving the requirements of a three-fifths vote to subd. 4, making it applicable to all state borrowing.

Old paragraph (b) is obsolete, since we are including here references to all authorized borrowing in other sections of the Constitution.

Paragraph (c) is new. Its import is discussed below together with the implications of paragraph (e). Paragraph (d) is unchanged, except for the order in which it appears in the list.

Paragraphs (f) and (g) are transferred from other portions of the Constitution. Paragraph (f) was Article IX, Sec.7. Paragraph (g) is the present Article XVII, reduced to its operative provisions.

The changes which we recommend in subdivision 2 are linguistic. We assume that they would have no substantive effect.

In subdivision 4, we do make a number of minor, but substantive changes. First we require all state debt (other than short-term certificates of indebtedness) to be approved by a three-fifths vote of the Legislature. Presently only that debt mentioned in subdivision 2(a) is covered by this requirement. We believe that state borrowing should be supported by more than a bare majority in the Legislature. We have eliminated the 20-year maximum term on bonds; in modern circumstances financing may well be spread out over a longer period. We have also allowed the Legislature to delegate the authority to fix the relative portions of bond revenues to be used for different purposes, although the Legislature itself would have to establish the maximum amount of indebtedness which could be incurred. Thus the Legislature could authorize the issue of bonds for construction of public buildings, but set guidelines (rather than a fixed dollar

sum) for each building.

C. Loan of Credit

Article IX, Sec.10, now prohibits the State from giving or loaning its credit. This essentially means that the State cannot guarantee the debts of others.

Two matters now contained in Section 10, the Railroad Bonds of 1858 and the Rural Development Credits of the 1920's, are both matters of history. They no longer have practical effect. We are recommending their repeal.

The prohibition on the loaning of credit has presented two kinds of problems in recent years. One of these is the extent to which the State can lend its credit to municipalities. Backing municipal debt with the "full faith and credit" of the State means that, if a city or village or school district fails to pay its bond obligations, the State must pay them. Since there is greater security for the loan, the interest rate is lower. Based on the language of the present Section 10, arguments can be made either way. This leads to unnecessary doubt and delaying litigation.

The second problem is the extent to which State guarantees may be used to insure loans made by private individuals to other private individuals. The provision of low-income housing is one example of this. The interest rates on borrowing for construction of low-income housing may be reduced if there is some element of guarantee on the repayment of the loans. (In some kinds of housing the FHA provides this kind of guarantee to lenders.) Can the State make these guarantees? Should the State be permitted to make these guarantees?

Recommendation

We are recommending substantial revision in this section. Our recommendation is intended to permit the State to guarantee the borrowing of local government agencies and of state agencies, but to limit the liability of the State in the most risky circumstances. Under our proposal, contained in Section 10, subd. 3 and 4, of the draft, the State could give unlimited guarantee to municipal general obligation bonds, but only limited guarantee to municipal or state revenue bonds.

The State could issue an unlimited guarantee for municipal general obligation bonds which meet the same "public purposes" test required of state bonds. See Section 10, subd. 4. No state bonds would be issued until the municipal bonds fell into default. The State might be able to recover against the municipality by requiring it to levy taxes to reimburse the State. Although the Legislature might put a dollar amount limitation on these bonds, the Constitution would not require it to do so. A municipal bond issue fully guaranteed by the State would have the advantage of a very good credit rating and consequently would carry a lower interest rate.

The Legislature could also guarantee municipal revenue bonds or the revenue bonds of state agencies. Subdivision 3 of Section 10 would limit this guarantee to a single cash amount, designated at the time of making the guarantee, and set aside in a special reserve or guarantee account. Thus the Legislature might grant a $10 million guarantee on a $100 million issue of municipal industrial development revenue bonds. The Legislature would authorize the borrowing of $10 million and place it in a reserve guarantee account. (The money would earn interest until used to pay a guarantee or repay the bonds.) If the municipality defaulted on the original industrial development

bonds, the State would be liable for the $10 million which it had already set aside, but no more. This form of partial guarantee is useful, because total default on bonds is very rare. A similar device is used in New York to guarantee housing bonds, resulting in a bond rating which is only one level lower than the general obligation bonds of the state. While this lowers the interest rate, it also provided substantial protection for the taxpayer against future public liabilities, since the amount of the guarantee has already been borrowed and limited at the time of the guarantee.

The State could also use this device to guarantee the revenue bonds of public agencies, like the Higher Education Facilities Authority.

D. Other Matters

Our proposal also makes a number of other minor amendments to Article IX, which are a consequence of our major recommendations.

They are set forth in tabular form:

Old Provision	Disposition
Art.IX, Sec.5, Highway user taxes.	Repealed as redundant. See Art.XVI, no substantive change intended.
Art.IX, Sec.7, Power to borrow to repel invasion, etc.	Added to Sec.6, subd.2, (Sec.7 to be repealed)
Art.IX, Sec.8, Disposition of funds received for bonds.	Repealed as unnecessary.
Art. IX, Sec.11, Publication of receipts and expenditures.	Repealed as obsolete.
Art.XVI, Sec.12. Bonds for state highways.	Incorporated into Art.IX, Sec.6, subd.2(a) (Art.XVI, sec.12, to be repealed)*
Art.XVII, Forest Fires.	Added to Art.IX, Sec.6, subd. 2(9), (All of Article XVII to be repealed.)
Art.XIX, Sec.2, Bonds for airports.	Incorporated into Art.IX, Sec.6, subd. 2(a)

* In transferring authority to borrow for state highway purposes from Article XVI to Article IX, we have made this borrowing subject to the same limitations as other state borrowing. It will now require a three-fifths vote of the Legislature. The maximum rate of interest will be repealed.

E. Summary

We believe that the proposed amendment, relating to the problems of public improvements, borrowing, and the guarantee of municipal borrowing, should serve to alleviate some of the fiscal problems of the State. By substantially clarifying the constitutional limitations on state borrowing, it should make it possible to issue state bonds without the necessity for "test cases" on the validity of the bonds. This should expedite the accomplishment of the goals sought by the Legislature. When it is sometimes necessary to provide "matching" state funds to obtain federal grants for certain purposes, the delays experienced may well eliminate the possibility of obtaining the state funds.

We are also eliminating obsolete provisions that reflect political policy which is no longer current. The State is engaged in transportation services (highways, airports, etc.) and other social service activities which were not thought of when the Constitution was drafted in 1857. Such obsolete provisions as the internal improvements section are a barrier to goals which all would like to see accomplished, yet provide no limitation against other perils facing present governments.

Finally, we believe that this amendment will assist in shortening and simplifying the Constitution.

IV. RAILROAD GROSS EARNINGS TAX

Recommendation

The Finance Committee recommends the repeal of Article IV, Sec. 32(a), the gross earnings tax on railroads. We believe that railroad companies should be treated like all other companies which do business in Minnesota. The Legislature should set the rate and form of taxation, as it does for other businesses in Minnesota.

Comment

The railroad gross earnings tax was adopted in 1871. The tax is currently 5% of the gross earnings of the railroad, paid in lieu of real property tax, business personal property tax, corporate income tax, etc. on their railway operations. The gross earnings tax may have represented a realistic assessment of the railroads' relative share of the fiscal burdens of the State at one time. It does not do so now. Section 32(a) makes it especially difficult to adjust the rate of this tax, since amendments must be submitted to popular referendum, unlike the taxes paid by other business, which are set by the Legislature. Thus, while the corporate income tax (for other businesses) has been adjusted many times in recent years, the railroad gross earnings tax has been unaltered for many years.

We believe that there are adequate methods for assessing and apportioning property taxes and income taxes. We believe that railroads should be treated like all other businesses which

operate in Minnesota.

We conducted a hearing on this matter on May 29 in St. Paul. We are pleased to report a general (although not unanimous) acceptance among the railroad companies of this proposal and a recognition of their obligation to provide equally with other segments of commerce and industry for the finances of the State.

V. STATE TRUST FUNDS

As to state trust funds and their investment, we make no recommendation for constitutional change.

There are three major trust funds. The Permanent School Fund and the Permanent University Fund are provided in Article VIII, Secs. 4 through 7. The Internal Improvements Land Fund is provided in Article IV, Sec. 32(b). In addition, Article IX, Sec. 12, contains some regulations regarding the administration of these funds.

All of the funds reflect the proceeds from lands donated to Minnesota by the federal government at the time of statehood. The State undertook to use the proceeds from these lands for specified purposes. We do not believe that we can or should recommend any change in these uses.

We have not examined the question of administration of lands which are the property of the three trust funds. The Natural Resources Committee has already reported to the Commission on this question. We have only examined the question of the financial management of the money already in the trust accounts.

We believe that the language of the three sections is sufficiently broad to permit the wise investment of the funds. The restrictions on the Permanent School Fund, in particular, are most progressive and up-to-date.

We have been informed that the Structure and Form Committee is recommending the abolition of the Internal Improvements Land

Fund. We do not oppose this suggestion, since the sum in that trust fund is so small that it could reasonably be merged with one of the other trust funds.

VI. OTHER ISSUES

The Finance Committee has considered a number of other issues, but because of lack of time, is making no recommendation on them. We do not believe them to be as important as the matters discussed above. We are listing them here because we do believe they merit further study and attention.

1. The entire question of uniformity and classification in taxation is raised by Article IX, Sec.1. Is this uniformity provision adequate to meet modern needs? Shoild it be changed, either to restrict the manner in which the Legislature can classify for tax purposes or to open this power still further?

2. Should the State, as well as local municipalities, be clearly authorized to levy special assessments against benefited property? The last clause of the second sentence of Article IX, Sec.2 now permits municipalities to do this. In some cases may it be desirable to have direct state construction or operation of certain kinds of facilities?

3. Should the nearly obsolete provisions of Article IX, Sec.13, dealing with banks and banking law, be repealed? The present language requires a two-thirds vote to pass a banking law. Should this be changed to a majority vote?

4. Should the nearly obsolete provisions of Article IX, Sec.15 be repealed? This section limits the amount of bonds which a

municipality may issue to support railroads. It was inserted into the Constitution in the nineteenth century when many towns and villages were incurring major indebtedness to lure railroads in their direction.

5. Should the provision of Article IV, Sec.10, that revenue bills originate in the House of Representatives, be repealed? This provision was copied from the federal Constitution. It was originally in the federal document because the United States Senate was not popularly elected in the first century of our history.

6. While this report was in preparation, the Committee received a suggestion which it did not have a full opportunity to discuss and evaluate, but which clearly appears to merit further study. This would change Article IX, Sec.10, to provide:

> The credit of the State shall never be given or loaned in aid of any private individual, association, or corporation except for a public purpose paramount to any resulting private use or benefit. Every gift or loan of credit authorized by law is presumed to be for such a purpose, but is subject to judicial review. No payment, contract, right or obligation made, entered into, or created pursuant to law, prior to the institution of litigation questioning the public purpose of the law, shall be invalidated or impaired by a judicial decision that such purpose is not paramount to the resulting private use or benefit.

In effect, this would shift a burden now placed upon public agencies to those who wish to challenge their actions. At the present time, public agencies which issue bonds (or the potential purchasers of bonds or potential contractors) must test the validity of state bonds before they become safe investments. This is expensive and may cause needless delay. Under this proposal, bonds and contracts would be presumed constitutional unless some adverse party instituted litigation to challenge them.

We express no opinion on this proposal but do advise further study.

VII. SUMMARY

The Finance Committee is recommending several changes to the Minnesota Constitution. They are:

1. An amendment to Article IX, Sec.1, which would permit a "piggyback" income tax.

2. A major amendment to Article IX, which would clarify the state's spending authority (repealing the "internal improvements" limitation), its borrowing authority, and its authority to guarantee the borrowing of local government units and state agencies.

3. Repeal of the railroad gross earnings tax and the treatment of railroads on an equal basis with other businesses.

The Committee is recommending no change in the constitutional provisions relating to trust funds.

A P P E N D I X A

A bill for an act

proposing an amendment to the Minnesota Constitution, Article IX, Section 1; providing as the basis for determining income tax, the federal income or federal tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. The following amendment to Minnesota Constituion, Article IX, Section 1, is proposed to the people of the state. The section, if the amendment is adopted, shall read as follows:

Section 1. The power ot taxation shall never be surrendered, suspended or contracted away. but a law may adopt as the basis for determining Minnesota income, privilege, or excise tax, either the income or the tax as determined by the laws of the United States for the taxable year of the taxpayer. Taxes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes, but public burying grounds, public school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property and houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation except as provided in this section, and there may be exempted from taxation personal property not exceeding in value $200, for each household, individual or head of a family, and household goods and farm machinery, as the legislature may determine; provided, that the legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to a cash valuation. The legislature may by law define or limit the property exempt under this

section, other than churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities and seminaries of learning.

Sec. 2. The proposed amendment shall be submitted to the voters for their approval or rejection at the general election for the year 1974. The ballots used at the election shall have the following question printed thereon:

"Shall Article IX, Section 1, of the Minnesota Constitution be amended to enable the legislature to adopt the federal income or a percentage of the federal income tax as the basis for Minnesota income taxation?

Yes _____

No _____"

MINUTES OF THE INTERGOVERNMENTAL AND LOCAL GOVERNMENT COMMITTEES

OF THE CONSTITUTIONAL STUDY COMMISSION

HELD IN MOORHEAD, MINNESOTA, MAY 4, 1972

Present:

Senator Kenneth Wolfe
Representative O. J. Heinitz
Professor Joyce Hughes Smith

Reporter: Joseph Hudson

Senator Kenneth Wolfe asked Mr. Kennedy to summarize for those present the major points in a paper on Local Government prepared for the Constitutional Study Commission.

Mr. Kennedy told the committee that the many terms used to name local subdivisions of the state in our present constitution are confusing. The words town, township, borough, city, village, municipal corporation, school district, county, local government unit, and political subdivision could be adequately defined by use of the terms, "political subdivision" and "local Government unit" and "school district".

Mr. Kennedy called attention to Article IX, Section 15. [County, city, or township aid to railroads limited.] He said that this appears to have been a curative amendment to remedy a defect in an 1877 law. If none of the bonds referred to in this section are outstanding, there seems to be no good reason to retain the section. However, it is possible that some of the bonds are still outstanding, in which case the determination would have to be made as to whether a repealer would affect these outstanding bonds.

Mr. Kennedy directed attention to Article VII, Section 7, the right to hold office. He pointed out that Article XI, Section 1, pertaining to local government, uses the language, "including qualifications for office". He noted that the term "qualifications" probably was intended to encompass such things as filing, oaths, etc. However, it might possibly be argued that Article XI, Section 1 authorized the Legislature or a home rule charter to impose substantive qualifications on eligibility for office. Minor grammatical changes to both Article VII, Section 7 and Article XI, Section 1 would remedy this situation.

Mr. Kennedy also referred to Article IX, Sections 1, 5, 6, and 10 pertaining to the use of state credit. He cited three laws passed by the 1971 Legislature, each of which will almost certainly be court tested. These are The Municipal Debt Service Law, Extra Session Laws 1971, Chapter 46; The Minnesota Housing Finance Agency Law of 1971, Laws 1971, Chapter 702; and Sewage Disposal Aid Law, Extra Session Laws 1971, Chapter 20. Mr. Kennedy said the issue is whether the basic ground rules regarding the use of state credit for financial assistance to political subdivisions should be handled in the constitution or on a case by case basis by the courts. He said that the legal aspects of this subject are contained in a letter to the Metro Council from Mr. Arthur B. Whitney, bond counsel for Dorsey, Marquart, Windhorst, West and Halladay, which Mr. Whitney could make available for the Commission.

Article XVI, Public Highway System was discussed by Mr. Kennedy. He spoke of the apportionment formula of this Article, the highway user tax distribution fund, and the "wheelage tax" provision.

He stated, that in view of the magnitude of the question involved, the Commission may well want to recommend further study of this Article by a special body.

Mr. Kennedy said that in his opinion Minnesota's local government Article (Article XI) is the most forward looking in the nation. He indicated, however, that there are problems with conflicts between city charters and special legislation, there being a question when a conflict arises as to which supersedes the other. He suggested clarification in this Article, including clarification in terminology.

The complete text of Mr. Kennedy's report to the Constitutional Study Commission on issues relating to local government is attached hereto.

Senator Wolfe told the committee that letters regarding changes and modifications in the local government article had been received from University of Minnesota Regent John Yngve; Mr. Paul Dow, Executive Secretary of the League of Minnesota Municipalities; and Mr. Clinton J. Hall. Mr. Yngve suggested changes in special laws and charters. Mr. Dow suggested automatic incorporation of a city when a population of 5,000 is reached and further suggested only three classes of municipalities: villages, cities of first class, and cities of second class.

Mr. Whitney of the Dorsey law firm suggested changes in the internal improvements article.

Mr. Lecy, City Clerk, Moorhead, asked the committee if some of its problem was in sorting out legislative matters from constitutional matters. Senator Wolfe replied that this was true. Representative Heinitz replied that some of the provisions which are statutory in nature should be removed from the constitution.

Mr. Thornley Wells, Clay County Commissioner suggested that there was

a need for eliminating the need for so much special legislation. Mr. Heinitz replied that the Legislature acts as a watchdog in this area and often requires the local units to submit financial proposals to the people for approval.

Replying to a question by a member of the Board of Clay County Commissioners, Senator Wolfe said nothing can be done by referendum on the State level in Minnesota.

Mr. Lloyd Sunde questioned the knowledge of the electorate regarding specifics of state government and said that the initiative and referendum process as used in North Dakota may not be a good thing for Minnesota.

Regarding townships, Mr. Tenesfelt, A Clay County Board member, said that the town form is still popular and is unlikely to be changed. In answer to Mr. Tenesfelt's question, Senator Wolfe said the intent of regionalizm is to strengthen local government.

Mr. Wells, Clay County Commissioner, suggested modification regarding Article XI, Section 1 on legislation affecting local government.

INTERGOVERNMENTAL RELATIONS AND LOCAL GOVERNMENT COMMITTEE
Hearing Room 118 State Capitol May 10, 1972 1 P.M.

The Chairman, Senator Wolfe, called the meeting to order at 1:10 P.M. to hear testimony relative to any provisions in the Constitution concerning local government.

Paul Dow, City Managers Association of Twin Cities, stated the concept of home rule should be strengthened rather than diminished. He suggested the governor be made chief executive in fact as well as in name. A significant movement in this direction would be made by consolidation of many departments, boards, commissions and agencies, into ten to fifteen major departments with each department head serving at the pleasure of the governor. He recommended an increased legislative research staff, which among other things, could carefully review local bills and consider the advisability of giving some statewide application.

Ralph Keyes, Executive Secretary, Association of Minnesota Counties, (no written statement) stated his Association does not have an official position to recommend to the Commission as its annual meeting will be held in September. He stated he feels the Constitution is a good document and does not need much revision other than removing the obsolete language adding that the lack of detail is a mark of merit. He made three comments relative to Article II: Sec.1-the provision relative to county boundary changes and county seat locations will be a bar to consolidation as long as it stays in; Sec.2-the reference to contiguous counties narrows what otherwise might be considered general law; Sec.4-might be changed to permit county home rule and the appointment of charter commissions by district court judges might be expanded using other means of appointment.

Jim Faber, Minnesota Association of Commerce and Industry, pointed out the history of special legislation matter taken up by the Legislature. He stated that in 1967 of 905 bills passed 304 were local; in 1969 of 1159, 340 were local; and in 1971 of 966, 254 were special legislation. Of all bills introduced in 1971 in the Senate one of every seven was local and one of every eight in the House. MACI does not feel this is efficient utilization of legislative time and talent. He urged the Committee and Commission to re-examine constitutional provisions which affect the situation.

Louis Claeson, Counsel, League of Minnesota Municipalities, (no written statement) stated the League will probably not have an official policy on the article relating to local government. He stated the provisions in Article XI, Sec. 2, relating to special laws are good and would not want a prohibition against special laws. He recommended the requirements for freeholders in Sec.4 be eliminated and the language concerning holding of elective office could be made clear or deleted if changes are to be made. He suggested other methods of appointing charter commission members than by district court judges could be permitted. He further suggested

that Article IX, Sec. 5 might be amended to permit the State to lend its credit to local governments. He favors using special legislation more sparingly and suggested screening committees and deadlines on local bill introductions.

The hearing adjourned at 3:30 P.M.

MINNESOTA CONSTITUTIONAL STUDY COMMISSION
G-19E Administration Building, St. Paul, Minnesota 55155
(612) 296-6683

REPORT OF THE

COMMITTEE

ON

INTERGOVERNMENTAL RELATIONS AND LOCAL GOVERNMENT

TO THE

CONSTITUTIONAL STUDY COMMISSION

ON

JULY 20, 1972

* * * *

SENATOR KENNETH WOLFE, CHAIRMAN
REPRESENTATIVE O. J. HEINITZ
MRS. JOYCE HUGHES SMITH

* * * *

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REPORT OF THE COMMITTEE ON
INTERGOVERNMENTAL RELATIONS AND LOCAL GOVERNMENT

I. INTRODUCTION

The Committee on Intergovernmental Relations and Local Government has been charged with responsibility for examination of all provisions in the state constitution dealing with the role of, and relationships between, local government units and state government in Minnesota.

The study concentrated on Article XI of the state constitution which presently covers five sections as follows:

Section 1 authorizes the legislature to create, organize, administer, consolidate, divide, or dissolve local government units and their functions. The section further authorizes the legislation to provide for the functions and boundaries of local government units and the selection and qualifications of their officers. The section requires that any changes in county boundaries or a change in the location of a county seat be submitted to the voters affected by such change for their approval or rejection.

Section 2 authorizes the enactment of special legislation provided that the locality affected is named and that local approval is required, unless the legislature provides otherwise. The section further provides that a special law may be modified or superseded by a later home rule charter provision but that the charter provision may itself be superseded by a subsequent special law on the same subject.

Section 3 provides that the legislature may authorize the adoption of home rule charters by local units of government. The section further provides that the legislature may establish the majority required for approval of the charter by the voters of the locality and the majority required by the voters of a city and county adopting a charter which consolidates or seperates the city and county under one local government.

Section 4 authorizes the legislature to provide by law for charter commissions including the method of selection and qualifications of charter commission members. Under this section, the legislature may also establish the mechanics of charter revision and repeal.

Section 5 provides that charters and laws which were in effect at the time of the adoption of the provisions in sections 3 and 4 should remain in effect until amended or repealed in accordance with the above mentioned provisions.

The Committee was fortunate in its assignment of subject matter in that Article XI of the state constitution is relatively new language, approved by the voters of Minnesota in 1958. The article encourages a great deal of local autonomy and allows needed flexibility in fixing ground rules for establishment and revision of local government charters.

As a result, Minnesota's local government article is generally regarded as a progressive, flexible statement of the relationship between state and local government. It is the responsibility of the legislature to utilize this flexible framework in authorizing an appropriate balance between local autonomy and state soverèignty while encouraging the maximum development of intergovernmental cooperation.

The Committee on Intergovernmental Relations and Local Government, then, did not have a major job of revision before it. The changes which are recommended by the committee reflect primarily a clarification of language brought about by the combination of two existing sections and the deletion of unneeded language. In addition, a new section on intergovernmental relations has been recommended to reflect the growing desirability and importance of inter-local and state-local cooperation in solving the challenging problems confronting government at every level.

In arriving at its recommendations, the Committee considered carefully the suggestions of numerous individuals and organizations who submitted letters and oral testimony. To accomodate the oral testimony, the Committee conducted public hearings in Moorhead, St. Paul, and Rochester. The Rochester hearing was held in conjunction with the annual convention of the League of Minnesota Municipalities, giving local government officials from all parts of the state the opportunity to suggest constitutional changes or to comment on present constitutional provisions. The Committee also had the benefit of three research papers prepared by Michael Hatch, a University of Minnesota law student who was assigned the local government subject area.

From its study of Article XI, the testimony, letters, and research papers which were provided to it, the Committee is offering comments on the areas of special legislation and home rule, charter revision, intergovernmental relations and local government organization. It should be noted that the Committee is, in some cases, suggesting constitutional changes, in others

statutory changes, and in still others no change in either constitutional or statutory provisions. In addition, several concerns brought to the attention of the Committee are being referred to other committees of the Constitutional Study Commission with recommendations that appropriate action be taken.

II. HISTORY OF LOCAL GOVERNMENT IN THE MINNESOTA CONSTITUTION

There have been three generations of provisions relating to local government in the Minnesota Constitution, and three different approaches to the problems of local government. Of course, there were also minor amendments from time to time.

The early era, 1857-1896. The original constitution contained relatively detailed provisions relating to county government, e.g. that each new county would contain at least 400 square miles. This language was the original article XI. It remained in the Constitution for over a century, until 1958.

The original Constitution did not provide for city or village government. Instead, all city and village problems were resolved by special acts of the Legislature, creating statutory organizations for the particular communities. In 1892, an amendment prohibited further special legislation.

The Middle era, 1896-1958. In 1896, the people adopted an amendment to Article IV, which provided a limited form of municipal "home rule". This allowed cities and villages to adopt home rule charters in certain cases, and prohibited the Legislature from enacting special legislation for them. The success and the failure of this system is discussed in part III of this report.

During this period, the language of Article XI, dealing with county governments, remained unchanged.

The recent era, 1958-. In 1958, the people adopted a new amendment, It eliminated the old, detailed municipal home rule provisions and substituted simplified language. It also consplidated the provisions of article XI, so that they deal both

with questions of county government and with questions of municipal government.

This 1958 amendment, which was adopted as a single proposition, provides broad power in the Legislature to define units of local government. Its general outline has been discussed in part I of this report.

III. SPECIAL LEGISLATION AND HOME RULE.

The issue. The first substantive area which the Committee faced was the problem of special legislation. Is it possible or desirable for the Legislature to reduce or eliminate the burden of special legislation, applicable to only a single community, which it faces every year?

The problem which the Committee must face is the relationship between the Legislature and the governing bodies of municipalities. If a locality has a special problem, which cannot be solved within the framework of general legislation, there are two ways in which a solution can be reached, through legislative action or through municipal action. The Legislature can enact a special law, which applies only to the specific municipality; this is known as "special legislation". The governing body of the particular municipality can itself enact the measure, if it has "home rule" power and the measure is not contrary to general state laws.

Recent sessions of the Minnesota Legislature have enacted a large quantity of such "special legislation". However, usually the Legislature requres approval of the legislation by the governing body of the municipality before it takes effect.

We report on the question of whether the present constitutional arrangements for such legislation are adequate for modern needs.

Constitutional Language

The present constitutional language is contained in Article XI, sections 2 and 3:

> Special Laws. Sec.2. Every law which upon its effective date applies to a single local government unit or to a group of such units in a single county or a number of contiguous counties is a special law and shall name the unit or, in the latter case, the counties, to which it applies. The legislature may enact special laws relating to local government units, but a special law, unless otherwise provided by general law, shall become effective only after its approval by the affected unit expressed through the voters or the governing body and by such majority as the legislature may direct. Any special law may be modified or superseded by a later home rule charter or amendment applicable to the same local government unit, but this does not prevent the adoption of subsequent laws on the same subject.
>
> Home Rule Charters. Sec.3. Any city or village, and any county or other local government unit when authorized by law, may adopt a home rule charter for its government in accordance with this constitution and the laws. No such charter shall become effective without the approval of the voters of the local government unit affected by such majority as the legislature may prescribed by general law. If a charter provides for the consolidation or seperation of a city and a county, in whole or in part, it shall not be effective without approval of the voters both in the city and in the remainder of the county by the majority required by law.

General background

The state is the basic unit of constitutional government in the United States. The several states joined together to form the United States. In legal theory, the state constitution distributes the powers of the state to various bodies. It gives legislative powers to the Legislature, executive powers to executive officers, etc. It may grant local governmental powers to local governmental units, or it may grant that local governmental power to the Legislature, to distribute to local governments as it sees fit.

If the state has no constitutional provisions granting municipalities powers, these local governmental units must look to the Legislature for statutes or charters, enabling them to act. The Legislature may grant, alter, and amend these powers, as it sees fit. The Legislature may create municipalities and define their powers by special act, dealing with only one community, or by general law, authorizing all communities of a certain size and description to exercise certain powers.

A state constitution may, however, contain a "home rule" provision. Such a provision permits units of local government to exercise all governmental powers with respect to local problems. Of course, the local laws must yield to general state laws.

The Minnesota constitution contains provisions of both types. According to Article XI, section 3, cities and villages have "home rule" powers, if they enact home rule charters. Such cities and villages can enact any local laws without going to the Legislature. The only exceptions to this rule are that the law must relate to a local purpose and that the city or village cannot enact a local law which contravenes generally applicable state law, Thus, for example, if the Legislature establishes a tax levy limitation which is applicable to all communities in the state, a "home rule" city cannot exceed the levy limitation without permission of the Legislature.

Not every city and village in Minnesota is a "home rule" city. Many operate under so-called "statutory" forms of government. Under this form of government, the local governing body has only those powers delegated to it in the statutory provision.

Any city or village can, however, become a "home rule" city or village in accordance with the provisions of Article XI, section 3.

County and town governments, on the other hand, are "statutory governments" unless the Legislature specifies otherwise. They have only those powers which are delegated to them. They cannot choose to become "home rule" communities unless the Legislature specifically authorized this. Thus, their powers are more strictly limited than those of other municipalities. The same is true of school districts and other special purpose districts which have only that authority which the Legislature has delegated to them.

History

The original state constitution contained no provision relating to municipal home rule. Accordingly, only the Legislature could create municipal governments. Municipal charters (or organic acts) were passed by the Legislature. A large volume of legislative output was the enactment of such laws, although it is clear that not much attention was devoted to it.

The consequences of such legislation were twofold. The legislators in St. Paul, who had to pass the laws, had little knowledge of the circumstances in the local community which occasioned them. The municipal officials on the other hand, could disclaim responsibility for the final decisions and "pass the buck" to the Legislature.

The 1896 amendment permitted cities and villages to adopt "home rule" charters, subject to very detailed limitations. It

also prohibited special legislation which would deal with only one city. The Legislature could only pass laws dealing with designated classes of cities and applying equally to all cities within the class.

While the amendment may have reduced the quantity of requests, the need for special legislative action to deal with the peculiar problems of some communities persisted. Since the 1896 amendment prohibited special legislation which named the municipalities concerned, the Legislature had to seek other devices. It accomplished this by describing, in rather elaborate detail, the characteristics of the community which was the subject of the legislation, but not naming it.

One 1913 law, for example, applied to counties with more than 2,500 square miles, a population in excess of 15,000, but containing no city or village in excess of 3,500 population. This approach had all of the disadvantages of the old special legislation and the additional disadvantage of obscurity. Only an accomplished geographer with a phenomenal memory (or the municipal officials immediately involved) could tell what municipality was meant by certain special legislation.

The consequence was the enactment of the present language of Article XI by constitutional amendment in 1958. This language permits municipal home rule, but also allows the Legislature to enact special legislation where that seem appropriate, naming the particular community or communities affected.

The underlying purpose of the present section 2 is to permit local legislation. The requirement of naming the unit or area involved is to avoid the difficulties of the old system of

legislation by description. The requirement of local ratification was clearly inserted to make home rule the prime resource and special legislation only a secondary route for the solution of local problems. The clear underlying purpose is to place responsibility for local affairs on the local officials.

In implementing the new section 2, the Legislature passed section 645.023 of the Minnesota Statutes. This section exempts all special legislation from the local approval requirement provided in the Constitution. This exemption was necessary to make possible legislation which would apply to large areas, like the Twin Cities area. Although the legislature exempted all special legislation from the requirement of local approval, it has also normally provided in special acts themselves for that local approval requirement to be reinstated. Thus there is a kind of amusing chain of authority:

> The Constitution requires special laws to have local approval unless a general law provides otherwise.
>
> The general law (provided for in the Constitution), reverses this presumption and requires local approval only if the special law so provides.
>
> Most special laws provide that they will not take effect until there is general approval.

Hence, three steps removed, we return to the Constitutionally mandated result.

Basic conclusion.

The Committee accepts the need for home rule and its desirability. Nevertheless, we recognize the occasional need for special legislation, relating to single communities or to groups of communities. The experience of 62 years, from 1896 to 1958, showed that a flat prohibition of special legislation was futile.

In the context of present-day Minnesota we think such a flat prohibition would be even less tenable. We have a state with regional characteristics which may require different legislative solutions. The Legislature must be able to deal with the problems of the metropolitan area, or of the Iron Range, to name only two regions, without pretending that it is legislating for other parts of the state.

While such regional legislation is necessary, there are frequently no local units with governmental powers to enact it. In the absence of such units, the Legislature must act.

There are other situations in which special legislation may also be appropriate. There may be circumstances in which it seems appropriate to exempt a particular municipality from the operation of a general law, because the municipality is already providing the protection or service on a local basis. There may also be other circumstances in which special legislation is justified.

We do not mean to encourage the use of special legislation to resolve local problems which may be resolved by home rule charter amendment. When local means could resolve a problem, local means should be used.

Problems requiring attention:

Since we accept both the desirability of home rule for cities and villages and the necessity of special legislation in some circumstances, we are content to recommend that the structure of the local government article remain virtually unaltered. There are, however, some specific minor points which require attention.

1. Requirement of local approval. Whenever it is reasonable to require approval of the local governmental units involved, we think that this should be done before special legislation is effective. This avoids both of the perils of special legislation: final decision by those unfamiliar with the situation and the risk of "buck passing" from municipal officials to those removed from local political responsibility.

The requirement of local approval means that the local governing body must accept responsibility for the decisions which it takes. We think this is desirable.

Nevertheless, there are circumstances in which it is unrealistic to ask for local approval. One of these is legislation which applies uniformly to some designated region of the state. In such cases there may be dozens or hundreds of municipalities affected. If any one affected municipality can veto the measure, although the others unanimously approve, it will be exercising a power which is clearly disproportionate to its population.

Over the past several sessions, the Legislature has drawn virtually the same distinction on a case-by-case basis. Special laws which apply to only one municipality normally have explicitly required local approval. Those which apply to an entire area have no such clause and become effective immediately upon passage.

We believe that this desirable result should not be left to the vagaries of the draftsmen of particular bills or to the alertness of individual legislators who have insisted on such provisions in floor amendments. We also believe that a constitutional amendment is not required to reach this desirable result.

The Committee recommends that the Legislature amend Section 645.023 to provide that special laws which apply to one local government unit or to a specified small number of units of government require approval by the respective governing bodies before they take effect, but that special laws with broader regional effect become effective upon passage by the Legislature. A draft bill to accomplish this result is included in an appendix to this report.

2. Enumeration of local government units or counties. The Committee received testimony indicating that the provision of section 2, which requires the enumeration of the local government units or counties which are affected by special legislation, is sometimes a burden. In the 1971 session of the Legislature, at least one bill was proposed which applied to all of the counties outside of the Twin Cities Metropolitan Area. It thus applied to 80 of the 87 counties of the state. Since those 80 counties are contiguous, legislative draftsmen decided that it was necessary to list them in order to comply with the pvovisions of section 2.

Such a result is clearly absurd. The purpose of the language requiring enumeration of the subjects of special legislation was to end the old system of special legislation by population figures, geographic pecularities, etc. It was to simplify, not to over-burden, the process of special legislation.

This purpose would be equally well served by constitutional language which would permit legislation to deal with all of the state except named counties. If a constitutional amendment is necessary to accomplish such a purpose, we recommend that such

an amendment be drafted and submitted to the people. We would recommend such a change as part of a general revision of Article XI; we do not recommend it as a matter requiring immediate or seperate amendment.

3. Circularity of legislation; supremacy of state law. Several persons raised the hypothetical problem of "circular" amendments, which section 2 creates. This section states that a home rule charter amendment may supersede a special law, but also that a special law may supersede a home rule charter amendment. Thus a city could enact some measure as a charter amendment, then the Legislatuare repeal it by a special law, then the city reenact it as a charter amendment, etc.

We know of no instances in which this has happened. Furthermore, there appear to be two reasons why it will not occur. In the first place, general state legislation supersedes all local legislation. Consequently, if the Legislature enacts a general law of statewide application, which incidentally repeals or alters some home rule charter, that general law will prevail and cannot itself be superseded by a later local enactment of the local governing body.

Under the old home rule provisions of Article IV, section 36, (repealed since 1958), this was enforced by the requirement that the charter be "in harmony" with state law.[2] Under the present Constitution, the Attorney General has ruled that the requirement of section 3 that a Charter be in accordance with this constitution and the laws" achieves the same result.[3] Of course, a city ordinance

could not exceed the authority granted in the charter.

If conflict between a special law and a charter amendment is contemplated, we do not believe there is a problem either. The usual requirement of local approval will eliminate the effectiveness of the special law. Even if the special law were to take effect without such consent, the particular affairs of a specific city seem best resolved by local officials, if no general state policy is involved.

Since we do not perceive a problem in this respect, we make no recommendation for change in the state constitution. There will be sufficient opportunity to deal with this problem, if and when it ever arises.

4. County home rule. The Metropolitan Inter-County Council recommended that county governments be given home rule power in the Constitution. Thus the County Boards would be empowered to enact any measures without special legislative authorization. They proposed that this ordinance authority apply to the county as a whole, but that contrary provisions of city or village laws take precedence over such county ordinances.

Under the present constitution, county governments have only those powers delegated to them by the Legislature. They do not have the power to enact "home rule" charters, unless the Legislature specifically authorizes this.

The Model State Constitution and many other state constitutions contain some home-rule power (or authority to pass ordinances) for counties. The California constitution has been cited as a particular example.

The Committee recommends that there be no constitutional amendment on this subject. The Legislature clearly does have the power to authorize counties to adopt home rule charters. If such a result is thought desirable, the Legislature could take action without the delay or expense of submission of the question to the voters.

IV. HOME RULE CHARTERS AND CHARTER COMMISSIONS.

The issue.

Do the present provisions relating to the establishment of Charter Commissions and the enactment and amendment of home rule charters adequately meet the problems of modern Minnesota? Do the detailed provisions require modification?

Background.

When Minnesota became a state in 1858, there was no provision in the state constitution for the exercise of home rule by local units of government. Matters of local concern were handled by the legislature through enactment of special laws. Action on special legislation under the original constitution took up a major portion of the legislature's time which could have been spent in dealing with problems of a statewide nature.

In 1896, Article IV, Section 36 was added to the state constitution, granting the legislature the authority to grant home rule to municipalities and spelling out in great detail involved mechanics for drafting and amending home rule charters. The section was statutory in nature requiring a judicially appointed 15 member "board of freeholders" to draft a proposed charter to

be submitted to the voters under the following conditions:

1) The freeholders were required to be residents of the municipality for at least five years prior to their appointment.

2) The baord was required to submit to the chief magistrate of the district a draft of the proposed charter within 6 months of the board's appointment.

3) The charter was required to be approved by 4/7's of the voters in the next election.

4) If approved by the electorate, the charter was required to be put into effect within 30 days of the election.

5) The legislature was required to establish the limits of the charter.

6) Proposed amendments were required to be published for 30 days in at least three newspapers within the city.

7) Amendments were required to be approved by 3/5's of those voting in the election.

This provision was amended in 1898 and again in 1942 but the detailed and inflexible constitutional requirements for charter drafting and amending remained.

The Minnesota Constitutional Commission of 1948 endorsed a number of changes in this constitutional framework, suggesting that majorities for amending and adopting charters be reduced, that the burdensome newspaper notices be reduced, that the six month limitation on the charter commission to submit a charter be extended to a feasible time limit, that the requirements for filing and publication of the charters be reduced, and that all of the above requirements be established by the legislature in a statutory rather than constitutional format.

Finally, in 1958, the legislature and voters of the state adopted an amendment providing for an entirely new local government article and a repeal of the language in the former Article IV, Section 36. The new article contained the five sections outlined above with Sections 3 and 4 establishing a constitutional framework for adopting and revising home rule charters. That constitutional framework is as follows:

> Home Rule Charters. Sec.3. Any city or village, and any county or other local government unit when authorized by law, may adopt a home rule charter for its government in accordance with this constitution and the laws. No such charter shall become effective without the approval of the voters of the local government until affected by such majority as the legislature may prescribe by general law. If a charter provides for the consolidation or seperation of a city and a county, in whole or in part, it shall not be effective without approval of the voters both in the city and in the remainder of the county by the majority required by law.
>
> Charter commissions. Sec.4. The legislature shall provide by law for charter commissions. Notwithstanding any other constitutional limitations, the legislature may require that commission members shall be freeholders, provide for their appointment by judges of the district court, and permit any member to hold any other elective or appointive office other than judicial. Home rule charter amendments may be proposed by a charter commission or by a petition of five percent of the voters of the local government unit as determined by law and shall not become effective until approved by the voters by the majority required by law. Amendments may be proposed and adopted in any other manner provided by law. A local government proposed and adopted in any other manner provided by law. A local government unit may repeal its home rule charter and adopt a statutory form of government or a new charter upon the same majority vote as is required by law for the adoption of a charter in the first instance.

The new article greatly increased the flexibility of the legislature in defining the ground rules for the establishment of cities and villages of home rule charters. Accordingly, the legislature provided in MSA 410.01-410.31 for the appointment by the District Court of a 7-15 member Charter Commission whose members

need meet only the requirements of qualified voters. The majority requirement for approving amending home rule charters was reduced from 4/7's and 3/5's, respectively, to 51% of those voting in the election. Charter amendments under Chapter 410 may be approved by the voters after having been proposed by the Charter Commission,[4] may be approved by the voters after having been proposed by the city council and reviewed by the Charter Commission,[5] or may be approved by passage of an ordinance adopted by a unanimous vote of the city council after a public hearing held after two weeks notice.[6] An amendment adopted under the third alternative becomes effective 90 days after passage unless a petition for a referendum is filed within 60 days of the amendment's passage and publication.

The language presently contained in Article XI, Sections 3 and 4, then, gives the legislature needed flexibility in establishing the ground rules for adopting, amending, and repealing home rule charters. The legislature has generally used that flexibility in making home rule an attractive alternative to statutory local government or heavy reliance on special legislation.

Problems requiring attention.

There are, however, several concerns which are reflected in the Committee's recommendations for a new section to Article XI replacing the present language in Sections 3 and 4. The recommended amendment-consolidation of those two sections is as follows:

Home Rule Charters. Sec.3. Any city or village, and any county or other local government unit authorized by law, may adopt a home rule charter for its government. The method of adopting, amending, and repealing home rule charters shall be provided by law. If a charter provides for the consolidation or deperation of a city and a county, in whole or in part, it shall not be effective without approval of the voters both in the city and in the remainder of the county by the majority required by law.

The alterations being recommended above fall into four general categories:

1) The Committee recommends deletion of any reference to "freeholders" in Section 4. The present provision provides that the legislature "may" require that the charter commission members be freeholders (property owners). The legislature in Minn.Stat. 410.05, subd.1, has provided that each commission member be a "qualified voter", thus establishing the policy position that property ownership should not be a requirement for holding the office of charter commissioner. The Committee agrees with that policy position and hopes that deletion of reference to freeholders in the Minnesota Constitution will discourage any future attempt to impose such a qualification on a person seeking public office. If recommendation #2 below is carried out and charter commissioners become elective, any requirement on elected officers (which would then include charter commission members) other than the qualifications of voters and a minimum age of 21 would be unconstitutional under Article VII, Section 7 of the Minnesota STate Constitution. Furthermore, there is some doubt that imposing such a qualification on prospective office holders would survive a federal constitutional test. In Kramer v. Union Free School District,[7] the U.S.Supreme Court declared a New York statute which required

either property ownership or enrollment of children in public schools as a requirement for voting in a school district election in violation of the equal protection clause of the 14th amendment to the U.S.Constitution.

2) The Committee recommends deletion of any reference to District Court judges in Section 4. The section now provides that the legislature "may provide for their (charter commission members) appointment by judges of the district court." It is the feeling of the Committee that members of the Charter Commission ought to be responsible to the people over whom their deliberations have such great influence. The Committee recommends to the legislature the early amendment of Minn.Stat.410.05 subd.1 to alter the system of selection of Charter Commission members. This might be by popular election or, in some instances, a City Countil might itself act as Charter Commission.

3) The Committee recommends clarification and simplification of language in Sections 3 and 4 which grants the legislature the authority to establish the mechanics of charter adopted, amendment, and repeal. That authority is now present but is muddled by references to possible mechanics which are not required. For example, Section 3 provides that:

> "Home rule charter amendments may be proposed by a charter commission or by a petititon of 5 percent of the local government unit as determined by law and shall not become effective until approved by the voters by the majority required by law. Amendments may be proposed and adopted in another manner provided by law."

In place of this potential contraditon,(and, at best, a waste of words) the Committee feels a simple grant to the legislature of the authority to establish the method of charter amendment is adequate.

4) The Committee recommends the replacement of the present Sections 3 and 4 "Home Rule Charters" and "Charter Commissions" with a single section entitled "Home Rule Charters".

With implementation of the above constitutional and statutory changes, it is the feeling of the Committee that Minnesota would have a constitutional and statutory framework for establishment, amendment and repeal of home rule charters which would encourage maximum utilization of home rule and minimum reliance on special legislation. Proper utilization of the flexibility found in such a framework would go a long way toward equipping local governments to deal with the challenges and opportunities which now exist and will no doubt continue to exist for generations to come.

V. INTERGOVERNMENTAL RELATIONS

With the complexity of problems facing government at every level, new governmental alignments and strategies are, and will be, required. In many cases, local units of government are already being required to cooperate, pool resources, and combine their efforts in solving the multitude of problems which exist across and between local government boundaries.

While emphasis has been placed on intergovernmental cooperation in our populas matropolitan areas with their jurisdictional overkill and desperate need to interact regardless of geographical boundaries, such cooperation is now being undertaken and planned in an unprecidented manner in the non-metropolitan areas of our state. In many such areas a shrinking tax base, coupled with an increased demand for local government services, has made intergovernmental cooperation critical to local government survival.

Minnesota has a progressive legislative and judicial history of encouraging such cooperation between local units of government and the encouragement of regional approaches to solving problems on a local or regional level. In 1943, the Minnesota legislature enacted the Joint Exercise of Powers Act, Minnesota Statutes 471.59, in response to the suggestion of Minnesota local government leadership including Orville C. Peterson of the League of Minnesota Municipalities. In enacting this legislation, Minnesota became one of a handful of states to provide statutory authorization for the joint exercise of such local government authority. The Minnesota Joint Exercise of Powers Act was and is a general authorization for any local unit of government to exercise any power held in common jointly with any other local unit of government. From 1943 to 1949, the Act was implemented without amendment but then had to be amended in response to a possible interpretation problem which would not have allowed contracting by one municipality for service with another. In 1961, the law was amended as a result of an adverse Attorney General's opinion to specifically authorize one unit of local government to purchase a service from another under a service contract. In 1965, an additional amendment provided that local government units could cooperate with state agencies, the federal government, or political subdivisions of adjoining states. Also in 1965, an amendment to the Act provided that agreeing municipalities could modify charter requirements for representation on a joint board and contract requirements for purchasing.

The Joint Exercise of Powers Act was sustained by the Minnesota Supreme Court in its only challenge in Kaufman v. County of Swift,[8] a 1948 case. Similar statutes have also been upheld in other states.[9]

Utilization of the authority provided in the Joint Exercise of Powers Act has taken the form of informal as well as formal organization through contracts, joint agencies, easements, regional associations of local governments, and non-profit corporations, to name just a few. Financing of the cooperative efforts has been provided through exchanges of personnel, equipment, materils and property; property and sales tax financing and state and federal grants in aid. The cooperation has been undertaken in the conducting of local services as diverse as police and fire protection, civil defense, courts and judges, public works, public buildings and grounds, transportation, health and welfare, libraries, and urban renewal. In all, a 1969 State Planning Agency survey found 240 different types of joint functions being undertaken in Minnesota through 1867 joint agreements.

While nothing in the present Minnesota constitution prevents the exercise of joint power as specifically authorized in MS 471.59, the Committee recommends that any re-writing of the local government article of the Minnesota Constitution include a mandate to the legislature to encourage and facilitate the kind of intergovernmental cooperation required to meet the challenges now facing the local government units.

In such a reqriting, the Committee recommends the addition of a new section to the local government article as follows:

> Intergovernmental relations. Sec.4. The joint or cooperative exercise of powers of local government units with each other or with other agencies of government may be provided by law.

The recommended provision is based in part on a recommended article of the Model State Constitution as follows:

> Section 11.01. Intergovernmental Cooperation. Nothing in this constitution shall be construed: (1) To prohibit the cooperation of the government of this state with other governments, or (2) the cooperation of the government of any county, city or other civil division with any one or more other governments in the administration of their functions and powers, or (3) the consolidation of existing civil divisions of the state. Any county, city or other civil division may agree, except as limited by general law, to share the costs and responsibilities of functions and services with any one or more other governments.

The states of Illinois and California have also provided within their constitutions similar provisions which include:

California

1) In non-charter counties, the legislature may provide that counties perform municipal functions at the request of the cities within them.

2) In charter counties a county may agree with a city within it to assume and discharge specified municipal functions.

Illinois

1) Local units of government may contract or otherwise associate among themselves to share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law, Participating units of local government may use their credit, revenue and other sources to pay the costs and to service debt related to intergovernmental activities.

2) The state shall encourage intergovernmental cooperation and use its technical and financial resources to assist intergovernmental activities.

In light of the liberal interpretation of the Joint Exercise of Powers Act by the Minnesota State Supreme Court in Kaufman v.

County of Swift, it might be argued that a provision such as the one which the Committee is recommending is not needed and is superfluous. It is the feeling of the Committee, however, that such a positive declaration of state policy is desirable and that the final clarification of any doubts as to the constitutionality of the Joint Exercise of Powers Act might increase the number of local governments in Minnesota who choose to exercise such joint power. To that end, the addition of such a section on intergovernmental cooperation is not only desirable but necessary.

VI. LOCAL GOVERNMENT IN THE FUTURE

Basic Issue.

In addition to our task of assessing problems of local government in the present, we have also looked at the prospects for local government in Minnesota in the future. Is our Constitution adequate to meet the changing problems which will face local government units in our state? Is there any need for constitutional change?

At our Moorhead hearings, one witness testified that the Minnesota Constitution was the "most forward-looking in the nation" on matters of local government. His basis for this assertion was that the provisions in the Minnesota Constitution are among the most flexible, allowing the Legislature to modify patterns of local government, to meet the changing population and service patterns of the state. We agree with this conclusion and suggest that there is no need for constitutonal modification on this score.

Article XI, section 1, gives the Legislature broad authority to determine the structure of local government. The section provides:

Local government, legislation affecting. SECTION 1. The legislature may provide by law for the creation, organization, administration, consolidation, division, and dissolution of local government units and their functions, for the change of boundaries thereof, for their officers, including qualifications for office, both elective and appointive, and for the transfer of county seats. No county boundary shall be changed or county seat transferred until approved by a majority of the voters of each county affected voting thereon.

This section has been part of the Constitution since 1958. During that period the Legislature has acted reasonably in responding to the changing needs of the community, without making revolutionary or drastic changes in local government organization.

Because, in our view, the structural problems of local government are best left to the Legislature, we do not believe that the Constitution should contain language dealing with probmems of government in the metropolitan area or other forms of regional cooperation, nor should it contain specific language delimiting the powers of various levels of local government. Therefore, we make no recommendations for change on this subject.

Since questions relating to various levels of local government have been brought to our attention, however, we believe that we should comment upon them and describe how they fit within the structure of the present constitutional language.

Townships.

One question brought to our attention was that of township governments. In many areas of the state, townships are a vital part of our governmental structure. The township meeting is one of the few, if not the only, "town meeting" type of government remaining in Minnesota. In other areas, however, township government has apparently fallen into disuse. In these communities, township functions are provided by the counties.

The present township structure is provided by statute. Where it is serving a useful function, it should be retained. If it has become obsolete in some areas, and if town governments wish to dissolve themselves, the Legislature could provide for voluntray dissolution. This problem does not require constitutional attention.

Counties. The only explicit reference to counties is contained in Article XI, section 1, requiring laws changing county boundaries or county seats to be submitted to referendum in the counties involved. We see no reason to change this language. Changes in county lines should not be undertaken without the vote of the people involved. We doubt that the Legislature would attempt such a change, without submitting it to local approval, even if the prohibition were not in the Constitution. However, we see no harm in retaining the language in the Constitution.

The Metropolitan Inter-County Council submitted a suggestion that the language of Article XI, section 3 be amended to provide counties with "home rule" powers, similar to that exercised by cities and villages. The proposal suggested that county ordinances enacted under such powers would have effect except where they were overriden by municipal home rule powers. This would permit county boards to enact ordinances for unincorporated areas.

The Legislature already has ample power, under Article XI, section 3, to grant full or limited home rule power to counties. Since the Legislature has this power by simple act, we see no reason to recommend a constitutional amendment to achieve the same result.

Metropolitan Council: Regional Commission. The Legislature has established the Metropolitan Council as a planning agency for the Twin Cities area. It also serves to coordinate some functions of the Transit Commission and the Sewer Board.

In construing the power and authority of the Metro Council the Minnesota Supreme Court has held that it is neither a unit of local government nor an agency of the state government. Rather, it is something in between. The ability of the Legislature to create such an agency, with limited powers fashined to meet the particular needs of the Twin Cities area, shows the flexibility and adaptability of the present constitutional language.

The Metropolitan Counci or its equivalent is a virtual necessity in modern conditions. Many federal "matching funds" programs require the approval of regional or area planning authorities. If there were no Council, this approval would have to come from some professional planning agency. Furthermore, some programs clearly do require area coordination, if they are to be successful.

The structure of the Metro Council cannot now be established and fixed forever. Its structure, the method of its selection, and even the exact scope of duties assigned to it will change from time to time. These are matters which are best left to the discretion of the Legislature. Legislators who represent the citizens of the Twin Cities area will undoubtedly have a major voice in the determination of these matters.

In other areas of the state, the Legislature has established Regional Development Commissions, to provide for coordination of

planning services and to offer local governments a vehicle for mutual cooperation.[10] These commissions do not have the same powers or composition as the Metropolitan Council. We believe that their statutory basis is adequate for the functions which they serve. We do not believe that they should be written into the Constitution.

The provision of local governmental services is one which will be evolving over the next few decades. With increased population, improvements in communication, and changes in demand for public services, local government cannot remain static. It must adapt to changing requirements of changing times. This will best be accomplished by allowing the Legislature to respond to the particular needs of particular times. A flexible Constitution is best in this regard.

VII. FINANCING LOCAL GOVERNMENT.

The state Constitution contains a number of provisions dealing with the financing of state government. It contains only limited restrictions on the financing of local governments. Since these questions necessarily overlap with the jurisdiction of the Finance Committee, we are identifying problems in this report and suggesting directions for change, but we are not making recommendations to the Commission.

Article IX of the Constitution deals with state finance. Some of its provisions apply to all units of government in the State. Others apply only to the state directly. For example, section 1 applies to all units of government and has a specific provision for municipalities. Section 5, prohibiting internal

improvements, applies only to the state government and not to municipalities.

Mr. Arthur Whitney of Minneapolis submitted to the Committee a memorandum on questions which have arisen in the context of municipal finance. The first of these dealt with Article IX, section 1. The proviso to this section permits special assessments (not based on property values) for "local improvements". These provisions do leave some ambiguity as to the definition of "local improvement" and the basis on which the assessments are to be allocated. We do not see any manner in which this can be improved, without creating further ambiguity in new language inserted. In its reexamination of section 1, however, the Finance Committee may be able to resolve this problem.

Sections 5, 6, and 10 of Article IX may, in some cases, restrict the ability of the state to insure municipal indebtedness. Section 5 prohibits the state from engaging in works of internal improvement; municipalities may do so, but are restricted to those which have a "public purpose". The two categories are not precisely equivalent. Municipal industrial improvement bonds may be for a "public purpose" (increase of employment in the locality), but still be for a prohibited internal improvement. Questions have been raised with respect to two laws relating to municipal finance passed by the 1971 session.[11] While these two cases (and two others relating to purely state agencies) will be resolved by litigation, clarification might assist in future programs and bond issues.

Section 6, subdivision 2, does not authorize the incurring of state indebtedness for municipal purposes. Section 10

specifically prohibits lending the credit of the state, except in certain limited circumstances. Both of these provisions might impede any effort of the state to guarantee municipal indebtedness.

The Committee is generally of the opinion that any widespread use of state power to guarantee municipal indebtedness might be counter-productive. While a debt-ridden municipality may acquire a better rating for its bonds by virtue of a guarantee against the general oblication of the state, the accumulation of many such guarantees will undoubtedly have an effect upon the overall rating for state bonds.

We believe that these provisions deserve attention in the context of the Finance Committee's overall examination of the finance article. We cannot attempt to make an evaluation of them out of that context.

Highway funds.

Municipal and county governments are also beneficiaries from the various Highway Trust Funds, established by Article XVI of the Constitution. These funds are being examined by the Transportation Committee and the Finance Committee. The two groups have held extensive hearings. We offer no recommendation with respect to them.

VIII OTHER ISSUES

In the course of our deliberations, we have encountered a number of other issues which deserve brief mention. In each of these instances, we have determined to make no recommendation.

Mr. David Kennedy, then of the office of Senate Counsel, suggested that we seek to clarify the use of certain terms in the

state constitution. He suggested that words like "local government unit", "town", "village", etc., were ambiguous and might create difficulties. He suggested precision in definition. We have received contrary advice from Mr. Harry Walsh of the Office of the Revisor of Statutes, who has suggested that these terms have received legislative and judicial interpretation over the years. Any attempt at redefinition might create more confusion than assistance. The present language seems to have created no serious difficulties. We recommend no change.

Mr. Kennedy also pointed out other language in the Constitution which has become obsolete or may cause confusion. Article IX, section 15, limiting local aid to railroads appears to be obsolete. It could be removed as part of a general revision of the local government provisions, the finance provisions, or as part of a general amendment removing obsolete provisions.

The Committee also received a suggestion from Mr. Kennedy that a potential conflict between Article VII, section 7, and Article XI, section 1, both relating to qualifications for office, be resolved by clarifying language. Although there is a possibility for conflict presented here, we believe that it is sufficiently remote to postpone its consideration until there is a general revision of Article XI.

IX SUMMARY OF CONCLUSIONS.

The Committee has been fortunate in dealing with an article of the Constitution which has been adopted only recently. We have only a few revisions to suggest. These are mainly technical, clarifying amendments, which do not alter basic policies already expressed in the Constitution.

We believe that the Legislature must continue to have the power to enact special legislation, but it should exercise this power sparingly. No constitutional amendment is clearly indicated on this score, although further study of the problem of enumeration of affected localities and potential circularity of legislation may indicate that amendments are required. The Legislature should amend Minn.Stat.section 645.023 to restore the requirement of local approval on special laws which affect only a few municipalities. The Legislature should consider the question of county home rule.

We recommend simplification and consolidation of sections 3 and 4 of Article XI. This should make charter commissions more responsive to the public. We also recommend legislation to implement these changes.

Although we believe that there is now adequate constitutional foundation for intergovernmental cooperation, through the use of the Joint Powers Act, we recommend amendment of the Constitution to spell out this power. We do this to encourage local governments voluntarily to cooperate to reduce costs and improve services. We also do it to remove the desire of local

government officials to seek the solution of their problems through special acts of the Legislature.

Since we believe that the Constitution provides adequate flexibility for the adaptation of local government in the future, we make no recommendation for change in that respect. We also make no recommendation for change in the finance provisions, leaving that task to the Finance Committee. Finally, we believe that the present definitions of types of municipalities are adequate and should not be changed, unless there is demonstrated need for clarification.

DRAFT LANGUAGE FOR LOCAL GOVERNMENT AMENDMENT

A bill for an act

proposing an amendment to the Minnesota Constitution, Article XI, changing section 3, adding a new section 4 and repealing section 4; providing for the grant and exercise of local government powers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. The following amendment to the Minnesota Constitution, Article XI, changing section 3, adding a new section 4, and repealing section 4, is proposed to the people. If the amendment is adopted, Article XI, section 4 will be repealed, Article XI, section 3 will read as follows:

Home rule charters. Sec. 3. Any city or village, and any county or other local government unit when authorized by law, may adopt a home rule charter for its government in accordance with this constitution and the laws. ~~No such charter shall become effective without the approval of the voters of the local government unit affected by such majority as the legislature may prescribe by general law.~~ The method of adopting, amending, and repealing home rule charters shall be provided by law. If a charter provides for the consolidation or seperation of a city and a county, in whole or in part, it shall not be effective without approval of the voters both in the city and in the remainder of the county by the majority required by law.

and the new Article XI, section 4 will read as follows:

Intergovernmental Relations. Sec. 4. The joint cooperative exercise of powers of local government units with each other or with other agencies of government may be provided by law.

Sec. 2. The proposed amendment shall be submitted to the people at the 1974 general election. The question proposed shall be:

"Shall the Minnesota Constitution be amended to change the provisions for the grant and exercise of local government powers?"

Yes _____

No _____ "

NOTES

1. Minn. Laws, 1913, c. 254.

2. State ex rel. Town of Lowell v. City of Crookston, 252 Minn. 526, 91 N.W.rd 81 (1958)

3. Op. Att'y-Gen. No. 58c, July 5, 1968

4. Minn. Stat. sec. 410.12.

5. Minn. Stat. sec. 410.27.

6. Minn. Stat. sec. 410.31.

7. 395 U.S. 612 (1969)

8. 225 Minn. 169 (1948)

9. See In re City and County of San Francisco, 191 Cal. 172, and City of Oakland v. Williams, 103 p.2d 168.

10. Minn. Stat. sec. 462.381 et seq.

11. Laws, 1971 Ex. Sess. c. 20, relating to grants for pollution control, and Laws, 1971 Ex. Sess. c. 46, relating to guaranty of municipal bond issues.

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"Metropolitan Government: Minnesota's Experiment with a Metropolitan Council", Minnesota Law Review, 53:122

A Manual for Interlocal Cooperation in Minnesota, Office of Local and Urban Affairs, State Planning Agency, St. Paul, 1969

INTERNAL RESEARCH/STAFF REPORTS

"Staff Memorandum on Local Government and the Minnesota Constitution", Michael Hatch, February 29, 1972

"Staff Memorandum on Local Government Organization", Michael Hatch, May 3, 1972

"Staff Memorandum on County Consolidation", Michael Hatch, June 30, 1972

TESTIMONY AND LETTERS TO THE COMMITTEE

Moorhead Hearing, May 4, 1972

David J. Kennedy, Assistant Senate Counsel

Arthur Whitney, Minneapolis Attorney

Thornley Wells, Clay County Commissioner

Virgil H. Tonsfeldt, Clay County Commissioner

Lloyd Sunde, Moorhead

Everett Lecy, Moorhead City Clerk

St. Paul Hearing, May 13, 1972

Paul Dow, City Management Association of the Twin Cities

Jim Faber, Director of Public Affairs, Minnesota Association of Commerce and Industry

Ralph Keyes, Executive Secretary, Association of Minnesota Counties

Louis Claeson, Counsel, League of Minnesota Municipalities

Rochester Hearing, June 13, 1972

Bambridge Peterson, Deputy Director, Metropolitan Inter-County Council

John Elwell, Minnesota City Management Association

Gerald Hegstrom, Metropolitan Council

Norm Werner, Coon Rapids City Clerk

David Gilderuse, Minnesota Township Officers Association

Minnie Elmon, Minneapolis

Dorothy Jackson, Minneapolis

Gilbert Wolff, Minneapolis

LETTERS

Robert T. Jorvig, Executive Director, Metropolitan Council, November 24, 1971

William A. Wettergren, Executive Secretary, Minnesota School Boards Association, December 3, 1971

John A. Yngve, Regent, University of Minnesota, November 9, 1971

Senator Kelly Gage, Mankato, November 5, 1971

Teamsters Joint Council #32, Minneapolis, November 8, 1971

Stanley G. Peskar, Assistant Counsel, League of Minnesota Municipalities, November 23, 1971

James C. Shipman, Executive Director, Metropolitan Inter-County Council, June 26, 1972

David J. Kennedy, Assistant Senate Counsel, December 3, 1971

Harry M. Walsh, Special Assistant Revisor of Statutes, July 2, 1972

Arthur Whitney, Minneapolis, November 22, 1971

Paul Dow, Executive Secretary, Metropolitan League of Municipalities, March 27, 1972

Iver Amondsen, Jr., Two Harbors, March 28, 1972

JUDICIAL BRANCH COMMITTEE HEARING
June 1, 1972 Room 15 State Capitol
10 A.M. and 4 P.M.

The Chairman, Mrs. Joyce Hughes Smith, called the meeting to order at 10 A.M. Members present were: Judge James C. Otis, Senator Stanley Thorup and Mr. Karl Rolvaag.

Mr. Gordon Peterson, Minneapolis (no written statement) appeared and stated he opposes any selection of judges other than by the electorate. He stated by taking away right to select judges from the people it is taking away access of people as to who should judge them.

Mr. Jerome Daly (no written statement) stated it is dangerous to take selection of judges away from the people. He is opposed to the "Missouri Plan" for selection of judges, and to giving any more power to the Supreme Court.

Mr. William Drexler, citizen, Justice of the Peace for St. Paul, (no written statement) is opposed to the proposed amendment being considered by the Committee. He stated it is now possible to unseat a judge. He predicted that sooner or later the trial by jury would be abolished, even though when attorneys are given a choice they select the jury system.

Mrs. Dorothy Johnson, 3501 Bryant Avenue, Minneapolis, questioned whether the public will have the opportunity to vote on proposals and choice of judges, which was explained.

Committee member Karl Rolvaag requested the following be reproduced and mailed to Committee members: an opposition statement to the so-called "Missouri Plan" by Judge Donald Barbeau, and a paper by Henry Halladay "The Case Against an Intermediate Court of Appeals".

The hearing was adjourned at 11:05 A.M.

* * * * *

The Judicial Branch Committee resumed at 4 P.M. before the Commission, Chairman Joyce Hughes Smith presiding.

Chief Justice Oscar Knutson, Minnesota Supreme Court, discussed the proposed judicial article which includes the merit plan of judicial selection, the California plan for discipline and removal and the intermediate appellate court, all within a unified state court system. He stated that although Minnesota's system has worked well more good judges might be attracted to the bench if they did not have to campaign. They can present no issues, no party, and no platform, and do not have time to campaign. He advised that all but one judge on the Supreme

Court have been appointed and to his recollection only two or three district judges have ever been defeated in an election. He explained the proposed commission to appoint judges would be composed of all segments of our society, some appointed by the governor, some voluntary. He recommended one commission to appoint to the Supreme Court and another for the District Court.

Mr. David Roe, President, Minnesota AFL-CIO, Stated Minnesota has established a court system of which it can be proud. He cited two parts of the proposal for change of concern to him, the proposal to effectively end the election of supreme court judges and the proposal to create an intermediary court of appeals. He recommended increasing the number of supreme court judges to its authorized nine to alleviate the workload problem. He stated the AFL-CIO supports bringing the courts closer to the people rather than removing them from the people as the proposed plan does.

Mr. William E. English, Minneapolis, presenting personal views, stated historically black people have viewed the judicial system as being primarily the most racist of all institutions in this country. He cited the disproportionate number of blacks and other minorities within our penal system as a reasonable conclusion that justice is somehow slanted. He recommended a commission elected by the people for a period not to exceed two years, non-partisan and non-biased, and that the commission and its choices be on a proportional basis.

Mr. William Cooper, Chairman of Minnesota Citizens for Court Reform recommended the merit selection system. He stated judicial selection should have a very thorough screening program which could be done thru a commission and stated the governor and legislature could make recommendations for commission members.

Rep. William Ojala, Aurora, Minnesota, practicing lawyer, cited instances where judges have acted improperly and stated the only way judges can be made accountable is thru election.

The hearing was adjourned at 5:30 P.M.

MINNESOTA CONSTITUTIONAL STUDY COMMISSION
G-19E Administration Building / St. Paul, Minnesota 55155
(612) 296-6683

The contents of this Report are preliminary only, not the final recommendations of the Commission. Therefore do not make any use of the Report without permission.

REPORT OF THE

JUDICIAL BRANCH COMMITTEE

TO THE

CONSTITUTIONAL STUDY COMMISSION

ON

AUGUST 17, 1972

* * * * *

PROFESSOR JOYCE A. HUGHES
JUSTICE JAMES C. OTIS
SENATOR STANLEY N. THORUP
HONORABLE KARL F. ROLVAAG

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I. INTRODUCTION

A. BACKGROUND

The Judicial Branch Committee was given the task of examining Article VI of the constitution which relates to the structure of the court system and the selection of judges. The committee consisted of Justice James C. Otis, Governor Karl F. Rolvaag, Professor Joyce A. Hughes, and Senator Stanley N. Thorup. Professor Hughes served as Chairman of the Committee. Mr. James Morrison and Mr. Stan Ulrich of the University of Minnesota Law School provided research assistance to the committee.

The committee conducted public hearings in Moorhead on May 4, 1972, in conjunction with the monthly meeting of the full Commission in St. Paul on June 1, and in conjunction with meetings of the Minnesota Bar Association and the Minnesota District, Municipal, and Probate Judges Associations in Rochester on June 26. The committee appreciates the cooperation of all those who have appeared before it or have offered suggestions in the form of letters or written statements. A listing of persons who appeared before the committee or communicated to it in writing is included in an appendix to this report.

The Committee has drafted a complete judicial article for the state constitution. It is based on language in the present constitution, but contains improvements which we believe desirable. Thus, our report is somewhat different in format from others which have been presented. It centers on the proposed article, with notes and comments on each section.

An earlier version of this proposed article was circulated to interested parties for comment. That version represented a synthesis of various sources. On the basis of comments received, changes have been made. This draft represents our recommendations to the Commission. Except where specifically noted, all members of the committee concur in this report.

B. SUMMARY OF RECOMMENDATIONS

A summary of the major impact of our proposed article should assist in its examination. Four major changes are proposed in Minnesota's judicial system as follows:

1. Merit selection. Section 7 of the committee's proposal provides for a system of "merit selection" of judges. Under this proposal, whenever a judicial vacancy occurred, a commission would nominate candidates for the office and the governor would appoint a new judge from among the list of nominees. The judge would be subject to a "yes/no" election on the question of his retention once every six years. (For details and further explanation, see Section 7 of the proposal.)

2. Unified court system. Several sections of the proposal permit the creation of a "unified court system". (See particularly Sections 1, 2, and 4.) The committee believes centralization and unification of administrative responsibility will permit more efficient and speedy administration of justice.

3. Intermediate Court of Appeals. We are also recommending the establishment of an intermediate court of appeals in Sections 1 and 3. This court would relieve the Supreme Court from the burden of hearing some appeals from the district court and permit it to focus upon issues of broad interest and importance.

4. Judicial discipline and removal. The committee recommends the establishment of the "California Plan" of judicial discipline and removal. (See Section 5, paragraph 2.) Our proposal gives the legislature authority to adopt a system of judicial discipline. Such a plan is already in effect for lower courts of the state and is being submitted to the voters of Minnesota as one of the amendments on the 1972 ballot.

The above mentioned amendment also contains provisions which would eliminate the probate court, provide for the appointment (rather than election) of the clerks of the district court, and allow the assignment to the supreme court of several district judges at the same time. In making its recommendations, the committee will refer both to the existing Article VI of the state constitution and to the proposal which is being submitted on the November election ballot.

II. COMMITTEE RECOMMENDATIONS:

The Judicial Branch Committee recommends the adoption of the *script language* as the entire text of Article VI as follows:

SECTION 1

Section 1. The Judicial Power. The judicial power of the state is vested in a supreme court, a court of appeals, and a district court. All courts except the supreme court may be divided into geographic districts as provided by law.

Present text; changes. Section 1 of the present constitution vests the judicial power of the state in a supreme court, a district court, a probate court, and such other courts, minor judicial officers and commissioners with jurisdiction inferior to the district court as the legislature may establish. The effect of the proposed Section 1 would be to:

1. Establish a court of appeals. This point is discussed in Section 3 of this report.
2. Abolish the probate court.
3. Establish a single, unified trial court.

There is no language in the present constitution equivalent to the second sentence of the provision but this does not appear to create any new power.

Comment

Court of appeals. The arguments for establishing a new court of appeals are set forth following Section 3 of this report.

Abolition of the probate court. Until the last session of the legislature, there was a probate court in each county of the state except one where a probate court served two counties.

The 1971 Legislature created a county court system, which now operates in all counties except Hennepin, Ramsey, and St. Louis. Under the county court system, the probate and municipal courts have been merged in order that full-time judges be available throughout the state. Separate probate courts have been maintained in the three above-named counties.

Under the proposed constitutional amendment to be voted on this November, total abolition of the probate courts as separate courts could take place and their present jurisdiction could be reassigned in accordance with law. This would permit the merging of probate business with civil and criminal business of other courts and hopefully expedite probate business.

In recommending the structure established here, the Judicial Branch Committee is going one step further. The committee is recommending that there be only one trial court in Minnesota for all classes of cases. Under the proposal, that court would be the district court, which could then make such provisions for the dispatch of probate business as seemed appropriate for a given local area. For example, the district court could assign one of its judges to hear probate matters on a full-time basis. Under the proposal, the precise organization could be established in each judicial district to meet the needs of that district.

Unified judicial system. Section 1, together with several other sections, is intended to create a unified judicial system for Minnesota. At the trial court level, such a system would mean that there would be only one trial court for a given locality, the district court.

In Hennepin, Ramsey, and St. Louis counties, a unified court system would mean that the district, probate, and municipal courts would be consolidated into a new district court. In other counties, the proposal would mean that the district and county court would be consolidated into a new district court.

After this consolidation, the district courts themselves would provide for the enumeration of divisions and the creation of local courts of limited jurisdiction. The district court would assign judges to its various functions. This is intended to provide flexibility to meet the differing needs of various parts of the state. For example, in areas with large population, a unified court would allow jurisdictions to be broken down on a functional basis. One judge might specialize in probate matters, another in juvenile cases, etc. In less populous areas, the district courts might choose to distribute the workload on a geographic basis, with each judge handling all of the business at a particular court house for a certain period of time. The two patterns of assignment given here are simply illustrations; the individual district courts would reach their own assignment patterns and create their own divisions, as individual circumstances would require. They would then be able to change such assignments, as circumstances changed.

Placing all trial jurisdiction in one local court would permit increased efficiency in utilizing judicial resources. It would permit the district court to assign judges to meet the changing workload, rather than the present system in which jurisdictional barriers sometimes prohibit some judges from assisting others.

Vesting this power in the hands of the district judges, rather than in the legislature, has two advantages. In the first place, it would allow more rapid response to changing patterns of case loads. The judges are in session throughout the year, while the legislature meets only periodically. In the second place, such an arrangement would allow different patterns of judicial administration to be established to meet the different needs of the various regions of our state. The proper system of inferior courts for the metropolitan area might be significantly different from the system which would meet the needs of rural counties.

Section 1 of the proposed judicial article is derived from **Advisory** Commission on Intergovernmental Relations, Court Reform, page 5, Suggested Constitutional Judicial Article, Sec. 1.

SECTION 2, FIRST PARAGRAPH

> *Section 2. The Supreme Court. The supreme court shall consist of one chief justice who shall be executive head of the judicial system and not less than six nor more than eight associate justices as the legislature may establish. It shall have original jurisdiction in such remedial cases as may be prescribed by law and such appellate jurisdiction as may be prescribed by law or by rule, but there shall be no trial by jury in said court.*

Present text; changes. There are three changes from the present text of Article VI, Section 2, first paragraph.

1. The amendment assigns the duty of "executive head of the judicial system" to the chief justice of the supreme court.

2. The amendment changes the denomination of the office from "judge" to "justice", formally recognizing a title which has long been used in fact.

3. Present language confers all appellate jurisdiction on the supreme court. The amendment provides for appellate jurisdiction to be established by statute and rule of court and is designed to permit allocation between the intermediate court and the supreme court.

Comment

The constitutional recognition of the chief justice as the "executive head of the judicial system" underscores the importance of the administrative functions of the office. It thus reinforces the unified court system which Section 1 creates.

The chief justice has long exercised the powers formally granted to him here, both by statutory authorization and by the simple prestige of his office. With the Judicial Administrator, who acts as his assistant in these matters, he proposes the budget for the state court system and makes recommendations to the governor and legislature regarding the support and constitution of the state's courts.

The authorization for an intermediate court of appeals in Section 1 of the proposed article requires limitation on the appellate jurisdiction of the supreme court. Were it otherwise, every decision of the intermediate court could constitutionally be appealed to the supreme court, thus destroying the ameliorating effect which the court of appeals might otherwise have on the workload of the supreme court.

Currently the unlimited appellate jurisdiction of the court is regulated by the Civil Appeal Code (Minn. Stat. Ch.605), the Criminal appeal statute (Minn. Stat. Ch. 632), Supreme Court Rules of Appellate Procedure (Rules 103-111), in addition to various and sundry scattered statutes. The amendment authorizes the Supreme Court to regulate appellate jurisdiction by rule, thus providing a flexible mechanism for the adjustment of appellate jurisdiction, depending upon circumstances.

SECTION 2, SECOND PARAGRAPH

The supreme court shall appoint, to serve at its pleasure, a clerk, a reporter, a state law librarian and such other employees as it may deem necessary.

Present text; comment. This provision is the same as the present third paragraph of Section 2.

SECTION 2, THIRD PARAGRAPH

The supreme court shall adopt rules governing the administration, admissibility of evidence, practice and procedure in all courts. These rules may be changed by the legislature by a two thirds vote of the members elected to each house.

Comment

This provision is entirely new. In the past, the legislature has provided for these matters by law. At one time, the legislature passed detailed codes of procedure for criminal and civil cases and rules for the administration of courts, setting term dates, etc. The legislature has gradually recognized that this is really a function which is better served by the courts themselves. Accord-

ingly, it has delegated substantial control over court administration to the Judicial Council (see MS 483.01-483.04) and the power to adopt rules for civil and criminal cases to the supreme court (see MS 480.05-480.059).

The provision proposed here would have double impact. The ability of the supreme court to adopt rules for judicial administration would assist the court in the implementation of a unified judicial system. The unified court should promote the efficient utilization of judicial manpower.

By ad hoc decisions the Supreme Court has, in effect, adopted rules of evidence. The authority granted in the proposed section would permit the adoption of an integrated, comprehensive code of evidence. In either case, the legislature could, by extraordinary majority, override the rules made by the supreme court. The ultimate responsibility of the legislature is thus recognized, but the section also acknowledges that the familiarity and competence of the judiciary in these areas should be given great weight.

SECTION 2, FOURTH PARAGRAPH

The supreme court shall appoint a chief judge from among the members of the court of appeals, a chief judge from among the members of the district court of each judicial district, a state administrative director of the courts and such assistants as the administrative director deems necessary to supervise the administration of the courts of the state.

Present text; changes--This entire provision is new, although current statutes do recognize the title of chief judge.

Comment

The chief judge of each judicial district is currently elected by the judges in the district, pursuant to Minn. Stat. Sec.484.34. In the 3rd and 6th Judicial Districts, the position is rotated; in several other districts the judge who is senior in service is re-elected each year; in still others the selection is made on the basis of ability and interest in administration. The recommendation, which places the selection in the hands of the supreme court, seeks to promote uniformity in the criteria for selection of chief judges of the district court and the new court of appeals.

The duties of the chief judge may well be increased under the proposed unified system. The assignment to divisions and allocation of responsibility among divisions of the district court will be carried out under that judge's leadership. The management of the court's business and affairs requires administrative and diplomatic skills as well as some continuity in office. These prerequisites can best and most efficiently be imposed by a single appointing agency.

SECTION 2, FIFTH PARAGRAPH

The chief justice may assign judges of the district court from one district to another to aid in the prompt disposition of judicial business. The supreme court may assign judges of the district court to act temporarily as judges of the court of appeals; judges of the court of appeals and of the district court may be assigned as provided by law temporarily to act as justices of the supreme court upon its request.

Present Text: Changes--This section replaces and substantially expands upon the language of the second paragraph of the present Section 2, which authorizes the supreme court to assign one judge at a time to serve as a temporary judge of the supreme court. On the ballot this fall is an amendment to permit the court to assign several judges at one time, if authorized by law.

Comment

Present statutes permit the chief justice to assign district judges from one district to another. Minn. Stat. Sec. 2.724. Under Minn. Stat. Sec. 484.05 a district judge may request another district judge to serve in the requesting judge's district, under certain circumstances. There is no power to require such transfer and the conditions operate to limit the effectiveness of the statute. The effect of the proposal is to give constitutional status to the statutory authority, without restricting limitations.

The first half of the second sentence grants the authority to assign district judges temporarily to the court of appeals. Such assignments may only be made "upwards" in the judicial system. Judges of the court of appeals may not be assigned to serve in the district court.

The second half of the second sentence authorizes the assignment of district judges or appeals judges to the supreme court, on request of the court. This goes beyond the present text in that it would permit temporary assignment of more than one judge at a time. Obviously, this is intended to cover the situation where all or a substantial number of the supreme court justices are disqualified. Currently, it is impossible to assign more than one temporary judge at a time.

A power of assignment is necessary for the efficient operation of the judicial system. If the unified court system is to work

efficiently to reduce court backlogs and to keep expenditure for judicial services to a minimum consistent with the fair administration of justice, there should be a power to assign judicial manpower between courts, as well as within courts.

Section 2 of the proposed judicial article is derived from several sources including the Minnesota Constitution Article 6, Sections 2 and 3 (prior to 1956 amendment); Minnesota Statutes Section 2.724; and Advisory Commission on Intergovernmental Relations, Court Reform, p. 5, Suggested Constitutional Judicial Article, Sections 2 and 3.

SECTION 3

Section 3. Court of Appeals. The court of appeals shall consist of not less than seven nor more than nine judges and shall have such original and appellate jurisdiction as provided by law.

Present Text: changes--This provision is new and is the operative provision for the court of appeals. Prior to 1956 Section 1 of Article VI would have permitted the legislature to establish an intermediate appellate court since judicial power of the state was vested in "such other courts, inferior to the supreme court, as the legislature may from time to time establish." By omitting that language, the 1956 amendment, which substituted the present language, eliminated the power of the legislature to create an intermediate court between the district and supreme court. Under the committee's proposal the intermediate appellate court would be a constitutional court which could not be abolished by the legislature, but whose jurisdiction would be established by that body.

Comment

Statistics on the supreme court indicate the need for an intermediate appellate court. Its business has more than doubled in the past ten years. In 1960-61, the supreme court heard an average of 235 cases a year and wrote 176 opinions. For the two year period 1970-71, the average annual number of opinions was 325. Even using the services of district judges assigned to assist the court, each supreme court justice had to write an average of 48 opinions a year, almost twice the number recommended for careful appellate opinion writing. (See Supreme Court of Minnesota, Office of the State Court Administrator, Eighth Annual Report, 1971, Minnesota Courts, pp. 4,6.) The supreme court will not be able to maintain its record of quality and efficienty if the present load is unrelieved.

Twenty-three states have intermediate appellate courts, including the Midwestern states of Illinois, Indiana, Michigan and Missouri. Fifteen of those states establish the court by constitutional provision; eight by statute, including three states where there is a specific reference to an intermediate court in the constitution.

In order to provide for panels of three judges, the proposed Section 3 authorizes not less than seven nor more than nine judges. In most states the minimum panel is three judges, except New York (four to five); Pennsylvania Superior Court (four, five or seven) and Tennessee Court of Criminal Appeals (three or five). Intermediate courts of appeals judges number from three (the two Alabama courts) to forty-eight (California).

Overall there are 381 intermediate appellate court judgeships in the 26 courts of the twenty-three states, for an average of about fifteen and a mean of nine.

The proposed court of appeals might sit in divisions. If nine judges are appointed, three judges could be assigned to each of three divisions. Section 1 permits geographic divisions of the court of appeals. The division could also be along functional lines, so that one division could hear civil appeals, another criminal appeals, etc. Other alternatives are obviously available. Eleven state intermediate courts of appeals regularly sit in divisions. New Jersey allows for divisions by rule; Oregon judges may sit in divisions at the discretion of the chief judge; the Tennessee Court of Appeals can sit in divisions when business requires it.

The jurisdiction of the intermediate appellate court will be provided by statute so that flexibility can be maintained to meet ever changing conditions.

SECTION 4

Section 4. District Court. The district court shall have original jurisdiction in all civil and criminal cases, and shall have such appellate jurisdiction as may be prescribed by law.

The number and boundaries of judicial districts shall be established or changed in the manner provided by law but the office of a district judge may not be abolished during his term. There shall be two or more district judges in each judicial district. Each judge of the district court in any

judicial district shall be a resident of such district at the time of selection and during continuance in office.

There shall be appointed in each county one clerk of the district court, whose qualifications, compensation, and duties shall be prescribed by law, and who shall serve at the pleasure of a majority of the judges of the district court in each judicial district.

Present Language

The first paragraph of the proposal is the present Section 5. The second paragraph is the present Section 3, except that the term "judicial district" has been used in place of "district" in the second sentence. No substantive change is intended.

The third paragraph is Section 4 of the proposal which is on the 1972 ballot. Clerks of the district court are currently elected in each county. If the 1972 amendment carries, clerks will be appointive officers. The committee's proposal changes the proposed amendment by adding the word "appointed" as the fourth word of the paragraph. That clearly is intended by the 1972 proposal.

Comment

The only substantive change recommended here is the appointment of clerks of the district court, a proposal already submitted on the 1972 election ballot. Clerks of the district court should be chosen for their administrative abilities. Such abilities are difficult to demonstrate in an election campaign. There are few, if any, policy decisions to be made by the clerk. The clerk should have the confidence of the district court judges under whom he serves. All of these reasons make appointment, rather than election, the most suitable method for choosing a clerk of district court.

Since Section 1 operates to eliminate all courts inferior to the district court, its appellate jurisdiction, if any, is left to the legislature. It may be that some provision will be made to allow review by one division of the district court of a decision rendered by another division. On the other hand, the legislature may determine that all review of district court decisions should be by the intermediate appellate court. These details are better left for legislation, rather than established by constitutional mandate.

SECTION 5, FIRST PARAGRAPH

> *Section 5. Judicial Rules of Conduct. The supreme court shall adopt rules of conduct for all judges. All judges shall devote full time to judicial duties. They shall not, while in office, engage in the practice of law or other gainful employment. They shall not hold any other public office under the United States except a commission in a reserve component of the military forces of the United States and shall not hold any other office under this state. The term of office of any judge shall terminate at the time he files for an elective office of the United States or for a non-judicial office of this state.*

Present provisions. The first three sentences are new. The remainder of the section is substantially the same as the present Section 9, which applies only to judges of the supreme court and district courts.

Comment

The first sentence of this section gives the supreme court the authority to adopt rules of judicial ethics. The integrity of the judiciary must be maintained beyond question. In many circumstances, however, the ethical obligations of a judge are far from clear. The establishment of such rules would permit judges and the public to make better determinations about the course of ethical conduct.

In order to prevent possible conflicts of interest, the second and third sentences require all judges to serve full time in their judicial duties. Supreme court justices and district court judges have long been full-time officers, although this was not spelled out in the constitution. The 1971 Legislature required all county judges and judicial officers (replacing the old probate judges and municipal judges) to be full-time judges. Thus, this requirement will represent little change from present practice. Placing the requirement of full-time service in the constitution would strengthen its force.

The third and fourth sentences spell out in greater detail the obligation of judges to spend full time in judicial service. The final sentence, copied from the present constitution but made applicable to all judges, vacates the office of any judge who files for non-judicial office. The Canons of Judicial Ethics prescribe that such political candidacy is a violation of the ethical duties of a judge.

SECTION 5. SECOND PARAGRAPH

The legislature may provide by law for retirement of all judges, and for the retirement, removal or other discipline of any judge who is disabled, incompetent or guilty of conduct prejudicial to the administration of justice.

Present language. Section 10 of the present Article VI grants the legislature the power to provide by law "for the retirement of all judges, . . . and for the removal of any judge who is incapacitated while in office."

The proposed amendment which is on the ballot this fall would give the legislature the power to provide by law "for the retirement of all judges, . . . and for the retirement, removal or other discipline of any judge who is disabled, incompetent or guilty of conduct prejudicial to the administration of justice."

Comment

The first phrase of the proposed paragraph provides the legislature with the power to establish a mandatory retirement age for judges. Section 8 of this proposal (Section 10 of the present Article VI) permits the assignment of retired judges to hear cases, as provided by law.

The remainder of this paragraph provides the legislature with the power to create a system of judicial discipline. Thus, it would be unnecessary to use the cumbersome impeachment process to remove a judge who had become unable to perform his duties or who had seriously violated the rules of judicial conduct provided in the first paragraph of this proposed section.

Under its existing power, granted by Article XIII, Section 2, the legislature has already established a system for the discipline and removal of the judges of inferior courts (Minnesota Statutes 351.03). This proposed section would permit the extension of that system, or a similar system, to include the judges of the supreme and district courts, as well as the proposed court of appeals.

All three forms of judicial discipline are important. Retirement is proper in cases where the physical or mental disability of a judge makes it impossible for him to continue his service, but no question of "fault" is involved. Removal or other disciplinary measures may be appropriate when there have been violations of standards of judicial conduct. Removal is an extreme sanction. Suspension, censure, or reprimand may be more appropriate sanctions in less serious cases.

Experience in California has indicated that the establishment of a body with the power to review judicial conduct has a salutary effect both upon public confidence in the judiciary and upon the judges themselves. See Frankel, "Judicial Ethics and Discipline for the 1970's," 54 Judicature 18 (1970).

Under the recommended text, the legislature is given the power to create the method of judicial removal. The California system calls for removal by the supreme court on recommendation of a commission on judicial qualifications "for action occurring not more than 6 years prior to the commencement of his current term that constitutes willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

Section 5 of the proposed article is derived from the present language in Article VI, Section 9, the language contained in the amendment being submitted to the voters of Minnesota this November and the Advisory Commission on Intergovernmental Relations, Court Reform, page six, Section 4.

SECTION 6

Section 6. Qualifications and Compensation. All justices and judges shall be admitted and licensed to practice law in this state. The compensation of all justices and judges shall not be diminished during their term of office.

Present language. The first sentence is a modification of the present language in Article VI, Section 7. That Section provides that supreme court and district court judges be "learned in the law". The final sentence is the same as the final sentence in the present Section 7, with descriptive modifications.

Comment

The present constitutional requirement that judges be "learned in the law" has been extended by statute to county court judges. The proposal would cover, constitutionally, judges at every level and would make explicit what is implicit in the prior language, i.e., that a judge must not only be admitted to practice, but must be currently licensed.

The concluding sentence, which is similar to a provision in the United States Constitution, is included to prevent the legislature from reducing the salaries of judges to punish them for decisions made with which the legislature did not agree. Although this is only a remote possibility such protection has traditionally been included in the constitution.

Note--Mr. Justice Otis abstained from consideration of amendments to the present Section 7 and the change in language from "learned in the law" to "admitted and licensed to practice law."

SECTION 7

Section 7. Judicial Nominating Commissions. The legislature shall, by law, establish one or more judicial nominating commissions for the nomination of justices of the supreme court, judges of the court of appeals, and judges of the district court. All judges shall be appointed initially by the governor from a list of nominees submitted by the appropriate judicial nominating commission. If the governor fails to make the appointment from such list within sixty days of the day it is submitted to him, the appointment shall be made by the supreme court from the same list of nominees. Each judge shall stand for retention in office at the next general election occurring more than four years after such appointment and every six years thereafter on a ballot which shall submit the question of whether he should be retained in office.

Present language. This proposed section replaces present Section 8, which provides that judges shall be elected, and Section 11, which provides that the governor may temporarily fill vacancies by appointment.

Comment

Since its adoption, Minnesota's constitution has provided for the popular election of all judges. In the 115 years since statehood, Minnesota has been indeed fortunate in the high quality of

its judiciary. The recommendations of this committee on the matter of judicial selection do not in any way reflect negatively on the quality and competence of past or present judges in Minnesota. Our proposal merely attempts to improve the quality of an already fine judicial system.

The method of judicial selection which the committee is recommending is commonly referred to as the "Missouri Plan" or "merit selection". Under the proposed Section 7, the legislature would create judicial nominating commissions consisting of both lawyers and non-lawyers. Upon a judicial vacancy, the commission would carefully screen candidates for the vacancy within the geographical jurisdiction of the court and then select a list of two or more candidates for the office. The governor would then make his appointment from among the nominees presented by the commission. As a safeguard to insure the prompt filling of each vacancy, the governor would be required to make his appointment within sixty days of the submission of the list of nominees by the commission. Failure to make the appointment within that sixty-day period would require the state supreme court to make the appointment from among the same list of nominees.

The section further provides that after the judge has served four years, the question would be put on the ballot, "Should Judge John Doe be retained in office as a judge of the district court?" On the question of retention, the voters would vote "yes" or "no". The judge would then come up for a similar vote on retention every six years.

In making this recommendation, the committee has carefully examined our present method of judicial selection in Minnesota. Under the present system, approximately 85 per cent of the district judges and six of the seven supreme court judges came to the bench by appointment by a governor without any systematic screening except through an occasional recommendation of the bar. It is unrealistic to assume that such selections have been made after an impartial, non-partisan, broadly-gauged scrutiny of the qualifications of the entire bar. The truth of the matter is that judges in the overwhelming majority of cases in Minnesota are not elected initially but are appointed by the governor. The committee's proposal would continue this present practice of appointment but would also increase the quality and visibility of the process which leads to the actual appointment of the judge.

The committee also believes that additional qualified and competent lawyers will seek appointment to judicial office under such a method of selection. Under the present system, too many qualified and competent lawyers who are successful practitioners decline to be considered for fear they will give up their practice only to be defeated by a politician with a popular name at some future election.

No one debates the desirability of having judges responsive to the people. Nevertheless, the public finds it distasteful for judges to become embroiled in politics. They have no platform, they can make no promises, and they must remain completely uncommitted to other persons in politics or any other area of civic activity. It is unbecoming for judges to become so deeply immersed in civic matters they may be disqualified in considering the merits

of controversial issues. The method of retention at election as proposed in Section 7 would allow the public to reflect favorably or unfavorably on a judge's competence in office and, thus, retain **ultimate control of the judiciary in the hands of the voting public.**

In every contested election for supreme court justice in Minnesota, about a quarter of a million people refrain from voting. Experience has demonstrated that many of those who do vote for appellate judges who run statewide have little or no knowledge of the candidates or their qualifications for office. For example, in 1964, the St. Louis Park League of Women Voters examined the returns reflected by voting machines in the election of a supreme court judge. In every St. Louis Park precinct where the incumbent's name appeared first, he won the precinct, and in every precinct in which the incumbent's name appeared second, he lost. While the proposed Section 7 would do **nothing** to improve voter interest or awareness, it would not allow a lack of voter interest or awareness to elect an unqualified judge.

Under the present method of judicial selection in Minnesota there continues to be a remote but ever present danger that a wholly unqualified candidate for the court might succeed to that office by default through the death or disability of the incumbent. The Minnesota Supreme Court has called attention to this problem in the Amdahl-Barbeau case reported at 264 Minn. 350. Although that case involved two highly qualified candidates, it stressed the problems which surfaced as a result of the death of an incumbent trial judge after the primary but before the general election. The

method of judicial selection proposed by this committee would insure that each successor to a judicial office had been carefully screened by the appropriate nominating commission and the above-mentioned situation coult not occur.

Some twenty-one jurisdictions have now adopted the "merit plan" for the selection of all or part of their judiciary. Appellate court judges are presently selected under such a plan in Alaska, California, Colorado, Idaho, Iowa, Kansas, Missouri, Nebraska, New Mexico, Oklahoma, Utah, and Vermont. Significantly, several of the above are neighboring states to Minnesota with an electorate and culture similar to our own.

The trend toward the adoption of the "merit plan", especially at the appellate level, stems in large measure from the activities of citizens groups, bar groups, and intergovernmental organizations. Such a method of judicial selection has been strongly recommended by at least two citizen conferences on court reform held in Minnesota, has the support of the American Bar Association and the American Judicature Society. The "merit plan" was strongly recommended a year ago at the National Conference on the Judiciary held at Williamsburg, Pennsylvania. Model acts embodying such a plan have been drafted or endorsed by the Committee for Economic Development, the President's Commission on Law Enforcement and Administration of Justice, the Advisory Commission on Intergovernmental Relations, the National Municipal League and the American Bar Association.

Despite the committee's favorable position on adoption of the merit selection system, it should be underscored that the recommendation is based on the premise that the nominating commission will fairly and adequately represent all segments of the population. The committee shares the concern of some groups that a judicial nominating commission could be captured, controlled and dominated by an unrepresentative segment of the bar and thereby produce nominees from that same narrow constituency. We are aware that the merit plan is being proposed at a time when groups traditionally excluded from the political process are beginning to exercise their political muscle, either independently or in coalition. It is the committee's view that a nominating commission can, and indeed must, include these groups, be sensitive to their concerns, and consider and recommend nominees who are broadly representative.

Under the proposed amendment, the composition of the nominating commission is left to be determined by statute. The pattern among the states using merit selection varies slightly. All of them provide for representation of lawyers, as they are able to evaluate professional qualifications and competence of candidates, as well as members of the general public. Some states require that a member of the judiciary serve on nominating commissions.

An eleven member commission might well be structured thus: the chief justice; 4 members of the bar; and six lay persons appointed by the governor to serve for periods coterminous with the appointing governor. Other patterns are possible, including a

majority of lawyers, with some being named by the organized bar and the others being named by the governor.

The "merit selection method" of judicial selection need not be a vehicle for restricting judicial office to a "chosen few" but can, in fact, insure that judges are not only qualified, but descriptively representative of all segments and interests. Because the committee is confident that the legislature will structure a commission to achieve these ends, we propose the "merit system."

Note--Governor Rolvaag abstains from the Committee's recommendations in this section. Professor Hughes' concurrence is contingent upon the establishment of a nominating commission which is representative of all cultural, ethnic, social and economic levels.

SECTION 8

Section 8. Retired Justices and Judges. As provided by law, a retired justice or judge may be assigned to hear and decide any cause over which the court to which he is assigned has jurisdiction.

Present language. The present provision is Article VI, Section 12. The only change is to substitute the term "justice or judge" for the term "judge".

Comment

There is no substantive change.

OTHER LANGUAGE OMITTED

The rearrangement of language made in the committee's proposal reduces the number of sections in Article VI from twelve to eight.

The substantive changes indicated above required the omission or change of some language in the present constitution. Other changes are as follows:

1. Section 6, relating to the jurisdiction of probate courts, is entirely deleted. This section becomes unnecessary, since all original jurisdiction is given to the reorganized district court.

2. The provision in Section 10 for the continuation in office of a judge who is near retirement age is deleted. This provision becomes unnecessary with the merit selection plan.

3. The Schedule appended to the end of the article is deleted. The Schedule served its purpose when the present Article VI took effect in 1958. It no longer has any practical effect.

If the proposed amendments on the ballot at this November's election are approved, a new Section 13, relating to the service of certain probate judges, would also be repealed. The proposed Section 13 is only transitional in effect.

III. SUMMARY OF RECOMMENDATIONS

The Judicial Branch Committee recommends repeal of the present language in Article VI of the Minnesota constitution and the substitution of an entirely new Article VI with Sections 1-8 as outlined in this report.

Briefly summarized the proposed Article contains the following substantive changes:

Section 1. Judicial Power. The section establishes a court of appeals; abolishes the probate court; and limits the state court structure to the supreme, appellate, and district courts.

Section 2. The Supreme Court. The section assigns the duty of "executive head of the judicial system" to the chief justice of the supreme court; provides for the establishment of the supreme court's appellate jurisdiction by law or by rule; allows the supreme court to adopt rules governing administration, admissibility of evidence, practice and procedure in all courts (subject to a veto of two-thirds of the legislature); allows the supreme court to appoint the chief judges of the district court in each district, the chief judge of the court of appeals, and an administrative director of courts; makes constitutional the present statutory authority of the chief justice to assign judges of the district court from one district to another; and allows the temporary assignment of judges of the district court to the court of appeals and the district and appellate court to the supreme court.

Section 3. Court of Appeals. The section provides that the court of appeals created by Section 1 consist of 7-9 judges and has original and appellate jurisdiction as provided by law.

Section 4. District Court. The section endorses the provision in the 1972 constitutional amendment which would require the appointment, rather than election, of clerks of district court.

Section 5. Judicial Rules of Conduct. The section authorizes the supreme court to adopt rules of conduct for all judges; requires all judges to devote full time to judicial duties; and endorses the provision in the 1972 constitutional amendment which would authorize the legislature to provide for the discipline and removal of all judges.

Section 6. Qualifications and Compensation. The section endorses the judicial interpretation of "learned in the law" as "admitted and licensed to practice law in this state" and applies that requirement to all judges.

Section 7. Judicial Nominating Commissions. The section establishes a "merit plan" for judicial selection for all judges.

Section 8. Retired Justices and Judges. The section contains no substantive change.

NOTE: A proposed constitutional amendment which would implement the recommendations of the Judicial Branch Committee is attached as an appendix to this report.

IV. APPENDIX I--WITNESSES, CORRESPONDENCE, STAFF RESEARCH

Persons Testifying at the May 4 Hearing in Moorhead

Hon. Oscar R. Knutson, Chief Justice of Minnesota
Richard Klein, Court Administrator of Minnesota

Persons Testifying at the June 1 Hearing in St. Paul

William J. Cooper, Minnesota Citizens for Court Reform
W.E. English, Minneapolis
David Roe, President, Minnesota AFL-CIO
Hon. Oscar R. Knutson, Chief Justice of Minnesota
Gordon Peterson, Minneapolis
Jerome Daly, Burnsville
William Drexler, Justice of the Peace, St. Paul
Dorothy Jackson, Minneapolis
Hon. William Ojala, State Representative, Aurora

Persons Testifying at the June 21 Hearing in Rochester

Hon. Harvey Holden, District Judge, Windom
Hon. John Friedrich, District Judge, Red Wing
Hon. Thomas Bujold, Municipal Judge, Duluth
Robert J. King, President, Minnesota State Bar Association
Hon. Noah S. Rosenbloom, District Judge, New Ulm
Hon. David E. Marsden, District Judge, St. Paul

Persons Submitting Letters and Written Statements

Joseph B. Johnson, Chairman, Judicial Selection Committee, Minnesota State Bar Association
Kenneth P. Griswold, Chairman, Civil Rights Committee, Minnesota State Bar Association
Hon. Dana Nicholson, President, Minnesota District Judges Association
Hon. Donald Barbeau, District Judge, Minneapolis
Henry Halladay, Minneapolis
Hon. Howard Albertson, Chairman, House Judiciary Committee
Thorwald A. Anderson, Jr., U.S. Attorney's Office
Lawrence A. Wallin, Political Science Department, Hibbing State Junior College
Hon. Warren Spannaus, Attorney General of Minnesota
Rev. Alton M. Motter, Executive Director, Minnesota Council of Churches
Hon. C.A. Rolloff, District Judge, Montevideo
Hon. Lindsay G. Arthur, District Judge, Minneapolis
Hon. L.J. Irvine, District Judge, Fairmont
Hon. Leonard Keyes, District Judge, Anoka

Internal Research

Staff Memorandum on "Intermediate Courts of Appeals", Stan G. Ulrich, February 28, 1972
Staff Memorandum on "Comments and Questions Concerning Proposed Judicial Article", Stan G. Ulrich, February 29, 1972
Staff Memorandum on "Judicial Article Amendments", Fred Morrison, July 13, 1972

Persons and Groups Invited to Testify Before the Committee

Hon. Dana Nicholson, President, Minnesota District Judges Association
Hon. Edwin P. Chapman, President, Municipal Judges Association
Hon. Clifford E. Olson, President, Probate Judges Association
Mr. John MacGibbon, County Attorneys Association
Mr. Joseph B. Johnson, Chairman, Committee on Judicial Selection Minnesota State Bar Association
Hon. Warren Spannaus, Attorney General of Minnesota
Mr. Melvin Orenstein, Chairman, Hennepin County Bar Association
Mr. Timothy P. Quinn,Committee on Judicial Selection, Ramsey County Bar Association
Mr. Marvin Anderson, Chairman, Minnesota Afro-American Lawyers
Hon. Howard Albertson, Chairman,House Judiciary Committee
Hon. William Dosland, Chairman, Senate Judiciary Committee
Mrs. Rita Kaplan, Judiciary Chairman, League of Women Voters of Minnesota
Mr. Dave Roe, President, Minnesota AFL-CIO
Mr. William Cooper, Citizens for Court Reform
Mr. William E. English, Region G, Governor's Commission on Crime Prevention and Control
Donald Glass, Twin City Chippewa Council
Mr. Erv Sargeant, American Indian Federation
Dr. John Warfield, Expanded Educational Opportunities, Macalester College
Chicanos Unidos, St. Paul
Guadaloupe Area Project, St. Paul

V. APPENDIX II--DRAFT CONSTITUTIONAL AMENDMENT

A bill for an act

proposing an amendment to the Minnesota Constitution substituting a new Article VI for the present Article VI, and altering Article XIII, Section 1; organizing the judicial branch.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. The following amendment to the Minnesota Constitution, substituting a new Article VI for the present Article VI, and altering Article XIII, Section 1, is proposed to the people. If the amendment is adopted, the new Article VI will read as follows:

ARTICLE VI

Section 1. The Judicial Power. The judicial power of the state is vested in a supreme court, a court of appeals, and a district court. All courts except the supreme court may be divided into geographic districts as provided by law.

Section 2. The Supreme Court. The supreme court shall consist of one chief justice who shall be executive head of the judicial system and not less than six nor more than eight associate justices as the legislature may establish. It shall have original jurisdiction in such remedial cases as may be prescribed by law and such appellate jurisdiction as may be prescribed by law or by rule, but there shall be no trial by jury in said court.

The supreme court shall appoint, to serve at its pleasure, a clerk, a reporter, a state law librarian and such other employees as it may deem necessary.

The supreme court shall adopt rules governing the administration, admissibility of evidence, practice and procedure in all courts. These rules may be changed by the legislature by a two thirds vote of the members elected to each house.

The supreme court shall appoint a chief judge from among the members of the court of appeals, a chief judge from among the members of the district court of each judicial district, a state administrative director of the courts and such assistants as the administrative director deems necessary to supervise the administration of the courts of the state.

The chief justice may assign judges of the district court from one district to another to aid in the prompt disposition of judicial business. The supreme court may assign judges of the district court to act temporarily as judges of the court of appeals; judges of the court of appeals and of the district court may be assigned as provided by law temporarily to act as justices of the supreme court upon its request.

Section 3. Court of Appeals. The court of appeals shall consist of not less than seven nor more than nine judges and shall have such original and appellate jurisdiction as provided by law.

Section 4. District Court. The district court shall have original jurisdiction in all civil and criminal cases, and shall have such appellate jurisdiction as may be prescribed by law.

The number and boundaries of judicial districts shall be established or changed in the manner provided by law but the office of a district judge may not be abolished during his term. There shall be two or more district judges in each judicial district. Each judge of the district court in any judicial district shall be a resident of such district at the time of selection and during continuance in office.

There shall be appointed in each county one clerk of the district court, whose qualifications, compensation, and duties shall be prescribed by law, and who shall serve at the pleasure of a majority of the judges of the district court in each judicial district.

Section 5. Judicial Rules of Conduct. The supreme court shall adopt rules of conduct for all judges. All judges shall devote full time to judicial duties. They shall not, while in office, engage in the practice of law or other gainful employment. They shall not hold any other public office under the United States except a commission in a reserve component of the military forces of the United States and shall not hold any other office under this state. The term of office of any judge shall terminate at the time he files for an elective office of the United States or for a non-judicial office of this state.

The legislature may provide by law for retirement of all judges, and for the retirement, removal or other discipline of any judge who is disabled, incompetent or guilty of conduct prejudicial to the administration of justice.

Section 6. Qualifications and Compensation. All justices and judges shall be admitted and licensed to practice law in this state. The compensation of all justices and judges shall not be diminished during their term of office.

Section 7. Judicial Nominating Commissions. The legislature shall, by law, establish one or more judicial nominating commissions for the nomination of justices of the supreme court, judges of the court of appeals, and judges of the district court. All judges shall be appointed initially by the governor from a list of nominees submitted by the appropriate judicial nominating commission. If the governor fails to make the appointment from such list within sixty days of the day it is submitted to him, the appointment shall be made by the supreme court from the same list of nominees. Each judge shall stand for retention in office at the next general election occurring more than four years after such appointment and every six years therafter on a ballot which shall submit the question of whether he should be retained in office.

Section 8. Retired Justices and Judges. As provided by law, a retired justice or judge may be assigned to hear and decide any cause over which the court to which he is assigned has jurisdiction.

Article XIII, Section 1 will read as follows:

Section 1. The governor, secretary of state, treasurer, auditor, attorney general, and the judges of the supreme , appeals and district courts, may be impeached for corrupt conduct in office, or for crimes and misdemeanors; but judgement in such case shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit in this State. The party

convicted thereof shall nevertheless be liable and subject to indictment, trial, judgement and puhishment, according to law.

Sec. 2 The proposed amendment shall be submitted to the people at the ____ general election. The question proposed shall be:

"Shall the Minnesota Constitution be amended to establish, organize, conduct, and operate the judicial power of the state?

Yes _____

No _____"

LEGISLATIVE BRANCH COMMITTEE HEARING

March 2, 1972 10 AM
Room 116 Administration Bldg.

Present: Professor Carl Auerbach, Chairman, Rep. Dirlam, Rep. Prifrel, Senator Brown, Betty Rosas, Sec.

The Chairman convened the meeting at 10:05 AM stating all speakers would be heard and each question asked would be directed to all who spoke on that particular subject.

Mr. Chuck Slocum appeared in behalf of Dave Krogseng, Chairman of the State Republican Party and read Mr. Krogseng's statement which suggested some improvements in the legislature, consideration of a unicameral legislature and creation of a citizens independent reapportionment committee.

Mr. Richard Moe, State DFL Chairman urged a unicameral legislature, removal of election contests from the legislature to courts, and a special bipartisan body to reapportion the legislature.

Senator George Pillsbury spoke in favor of a unicameral legislature.

Mr. Cal Clarke, Citizens League stated the single most important element is the time available to the legislature and the way the time is used. He listed four considerations to determine a good system of representing people. 1-Is the office of legislator a visible one? 2-Is the process democratic? 3-Once elected are individual legislators all likely to have a significant role in the legislative process? 4-To what degree is a legislator accessible to his constituents? He felt a long hard look should be given to unicameralism-in other states where considered it has not been adopted. The drawing of district lines should be done by a neutral bipartisan commission.

Mr. Vern Ingvalson, Minnesota Farm Bureau, spoke in favor of a bicameral legislature, the present size, governor having power to call a special session, biennial sessions, reapportionment done by legislature, and the prohibition of lotteries.

Mr. Dave Roe, AFL-CIO spoke in favor of annual sessions, having no constitutional provision for length, convening, adjournment or introduction of bills. He stated the legislature should redistrict itself and to facilitate redistricting all precincts be given successive numbers. He favors party designation, easy voter registration done statewide and perhaps by mail.

Mr. Steve Alness, Mahtomedi, (Mpls.Star) spoke in favor of a unicameral legislature stressing efficiency, visibility and ease to understand. He stated reapportionment is much simpler and the constituent need only know one representative.

Mr. Norman Larson, National Farmers Organization stated the size of the legislature should be determined by the legislature.

Mr. Andrew Kozak spoke in behalf of the Lt. Governor Rudy Perpich in favor of a unicameral legislature and the immediate disappearance of the conference

committee. He stated the legislature cannot be counted upon to reapportion or reduce size and it should be reapportioned by a panel of non-legislators the year after figures are released. Suggested 135 for size. He would like to have secret deliberations excluded from the Constitution.

Mrs. Joseph Brink, St. Joseph stated she is not in favor of reducing the legislature as this would require hiring 1-1/2 to 2 more people for each reduction.

Senator Mel Hansen stated every voter should be given a choice between at least two candidates or two political parties. He disagrees with having federal judges making the decisions as to size and kind of legislature the state will have.

An interesting question and answer period followed the presentations. The hearing was concluded at 12:45 P.M. and further testimony on this subject was heard at the full Commission Meeting at 2 P.M. held in Room 15 of the State Capitol, which is included in the minutes for the Commission Meeting.

Carl A. Auerbach
Chairman

CAA/br

MINUTES OF THE LEGISLATIVE COMMITTEE

OF THE CONSTITUTIONAL STUDY COMMISSION

HELD IN MOORHEAD, MINNESOTA, MAY 4, 1972

Professor Auerbach invited audience participation in a conversation concerning the topic of the committee -- Article IV, Legislative Department. He explained that the committee has discussed unicameralism and redistricting.

Pamela Holland from North Dakota, who had worked on the constitutional issue in North Dakota, discussed unicameralism, stating that it did almost as well on the ballot in North Dakota as did the constitution itself, even though this topic was not highly organized. The unicameral committee did not feel that the issue of unicameralism was significant in causing the defeat of the constitution.

Professor Auerbach asked whether the North Dakota people felt it was wise to keep unicameralism as an alternate issue rather than putting it in the constitution.

Miss Holland replied that she felt it should be kept as an alternate.

Senator Brown asked who in North Dakota favored unicameralism and who opposed the issue.

Miss Holland explained that the legislators were against unicameralism, feeling that the rural areas would suffer under the system. She also said that Montana will have unicameralism as an alternate proposition on its ballot.

Senator Brown asked if they had discussed the limitations on the size of the North Dakota legislature, whether it be bicameral or

Miss Holland said that they felt that a minimum of 99 members was necessary, however numbers had not been stressed. This was left up

to the Reapportionment Committee to decide.

Professor Auerbach asked if the Reapportionment Committee was part of the constitutional issue on the ballot.

Miss Holland explained that it was, that the lay commission was to decide by following guidelines laid down.

In answer to a question raised by Professor Auerbach, Miss Holland stated that North Dakota was going to start shortly in an attempt to "get a better document". She said that she felt the right to work was the main reason for defeat of the constitution.

In answer to Senator Thorup's question, Miss Holland said the voter turnout on the issue was better than other special elections.

Senator Brown asked, "Why a special election?"

Miss Holland: "By law it's necessary."

Senator Brown asked, "How would you present special amendments or parts that you feel are important?"

Pamela Holland: "By getting 20,000 signatures - initiative - or on the regular ballot."

Representative Prifrel asked how the right to work got involved in the constitution.

Miss Holland replied that this was . . ."part of the old laws to protect workers from being 'blackballed'."

Professor Auerbach thanked Miss Holland for her comments.

Senator Brown questioned Miss Holland: "As long as we are discussing alternatives, what about parliamentary system?"

Miss Holland: "We didn't get into that."

Senator Brown: "Did you talk about optimum numbers as far as how many people should be represented?"

Miss Holland: "No."

Mr. Clifford Holmcast from Fargo told the committee that if they "wanted to get this type of thing passed, you need to have time to make sure you get the information out to the people."

The question of having partisan designation in elections was raised.

Senator Brown said that this is better taken care of by statute than by constitutional means. He said that there seems to be a movement in the direction of designation.

Representative Prifrel said that there have always been problems trying to get this bill through, but that the prospects are getting better.

Senator Brown said this would mean a lower turnover as far as legislators are concerned --- it would be protection for the incumbents.

Representative Prifrel said that when he was first elected partisan bill were fought more than they are now.

Miss Holland said that partisan designation was a big part of the unicameral debate -- it was felt that it was very necessary in order to have someone to be responsible to -- the party.

Miss Holland questioned whether the committee has had much testimony on reapportionment.

Professor Auerbach said that the testimony seemed to indicate that there should be a commission to handle reapportionment. Some feel that the legislature should handle this first, but if they can't do it, then the commission should do it. Others felt it wise to let the commission do it. Another problem, Professor Auerbach said, is the composition of the reapportionment commission and how it would be appointed.

MINNESOTA CONSTITUTIONAL STUDY COMMISSION
G-19E Administration Building / St. Paul, Minnesota 55155
(612) 296-6683

The contents of this Report are preliminary only, not the final recommendation of the Commission. Therefore do not make any use of the Report without permission.

REPORT OF THE

LEGISLATIVE BRANCH COMMITTEE

TO THE

CONSTITUTIONAL STUDY COMMISSION

ON

JULY 20, 1972

* * * *

PROBLEMS OF REAPPORTIONMENT

* * * *

PROFESSOR CARL A. AUERBACH, CHAIRMAN
SENATOR ROBERT J. BROWN
REPRESENTATIVE AUBREY W. DIRLAM
MRS. DIANA MURPHY
REPRESENTATIVE JOSEPH PRIFREL

* * * *

UNIVERSITY OF Minnesota

LAW SCHOOL · 125 FRASER HALL · MINNEAPOLIS, MINNESOTA 55455
PHONE 373-2717

July 10, 1972

To: Members, Minnesota Constitutional Study Commission

From: Legislative Branch Committee

Subject: Recommendations for Revising Constitutional Provisions Regarding Apportionment and Districting

We are enclosing a copy of our Report which sets forth the recommendations we are making with respect to revision of the constitutional provisions regarding apportionment and districting.

Senator Robert J. Brown dissents from these recommendations, but agrees that the task of apportionment and districting should be taken away from the Legislature. We are also enclosing a copy of Senator Brown's alternative proposal.

We should point out that the recommended provisions regarding the size of the Legislature are tentative only and should not be taken as reflecting the final judgment of our Committee.

Our report is scheduled for consideration at the full Commission meeting on July 20.

TABLE OF CONTENTS

RECOMMENDED CONSTITUTIONAL PROVISIONS FOR PERIODIC REAPPORTIONMENT AND REDISTRICTING

I. INTRODUCTION

Minnesota's recent experience with reapportionment following the 1970 Census reveals the inadequacy of the existing constitutional provisions governing reapportionment and redistricting. We are proposing alternative constitutional provisions which would take this task away from the Legislature and entrust it to an Apportionment and Districting Commission.

A brief summary of our recent experience will help to underscore the need for constitutional revision in this area.

II. HISTORY OF REAPPORTIONMENT IN MINNESOTA

A. Constitutional Provisions

1. Article 1, section 1 provides:

> The legislature shall consist of the Senate and the House of Representatives. The Senate shall be composed of members elected for a term of four years and the House of Representatives shall be composed of members elected for a term of two years by the qualified voters at the general election.

2. Article 4, section 2 provides:

> The number of members who compose the Senate and House of Representatives shall be prescribed by law, but the representation in the Senate shall never exceed one member for every 5,000 inhabitants, and in the House of Representatives one member for every 2,000 inhabitants. The representation in both houses shall be apportioned equally throughout the different sections of the state, in proportion to the population thereof.

3. Article 4, section 23 provides:

> The legislature shall have the power to provide by law for an enumeration of the inhabitants of this State, and also have the power at their first session after each enumeration of the inhabitants of this State made by the authority of the United States, to prescribe the bounds of congressional, senatorial and representative districts, and to apportion anew the senators and representatives among the several districts according to the provisions of section second of this article.

4. Article 4, section 24 provides:

> The senators shall also be chosen by single districts of convenient contiguous territory, at the same time that members of the House of Representatives are required to be chosen, and in the same manner; and no representative district shall be divided in the formation of a Senate district. [The section then contains provisions which eliminated staggered senatorial elections after the 1881 reapportionment. It goes on to say that] thereafter, senators shall be chosen for four years, except there shall be an entire new election of all the senators at the election of representatives next succeeding each new apportionment provided for in this article.

B. Reapportionments Prior to 1972 Reapportionment

Despite the fact that Art. IV, section 23 has called for reapportionment at the first legislative session after each federal census, there have only been nine general reapportionments in Minnesota since the adoption of the State's Constitution in 1857. Initially there were 26 districts, 37 senators and 80 representatives.[1/] The

succeeding plans, and the number of districts and legislators they specified, were

	Districts	Senators	Representatives
Laws 1860, c. 73	21	21	42
Laws 1866, c. 4	22	22	47
Laws 1871, c. 20	41	41	106
Laws 1881, c. 128	47	47	103
Laws 1889, c. 2	54	54	114
Laws 1897, c. 120	63	63	119
Laws 1913, c. 91	67	67	130

By Laws 1917, c. 217, the number of representatives was increased by one (the 65th district), but there was no accompanying general reapportionment.

Ex. Sess. Laws 1959, c. 45	67	67	135
Ex. Sess. Laws 1966, c. 1	67	67	135

In the 46 years that elapsed between the 1913 and the 1959 reapportionment, the Minnesota Supreme Court refused to intervene to compel reapportionment.[2/] The 1959 reapportionment was spurred by a pioneer three-judge federal district court ruling which anticipated the later decision of the Supreme Court of the United States in Baker v. Carr[3/]. The federal court concluded that it had jurisdiction to entertain a suit to have the 1913 reapportionment declared unconstitutional because of the federal constitutional issue asserted, namely that the 1913 reapportionment violated the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.[4/] Though the court held that the Legislature's duty to apportion itself was

"unmistakable," it deferred consideration of the issue presented until the legislature "has once more had an opportunity to deal with the problem, which is of vital concern to the people of the state."[5/]

In the light of the Supreme Court's subsequent holdings, the 1959 reapportionment was unconstitutional, particularly after the 1960 census.[6/] On December 3, 1964, a three-judge federal district court, presided over by Judge Blackmun, said so.[7/] Based on the 1960 census, the population of Senate districts varied from 100,520 to 24,428, -- a maximum population-variance ratio of 4.1 to 1; the population of House districts varied from 56,076 to 8,343, a maximum population-variance ratio of 6.7 to 1.[8/] But the court, following the example of Magraw v. Donovan,[9/] allowed the Legislature a final opportunity to reapportion itself. The Legislature passed a reapportionment bill which was vetoed by Governor Rolvaag. The Governor's veto power over this subject matter was challenged but was upheld by the Minnesota Supreme Court.[10/]

The Legislature then adjourned without passing a new reapportionment bill. Though requested to reapportion the Legislature itself, the three-judge federal court refused to do so.[11/] Instead it urged Governor Rolvaag to call the Legislature into special session.[12/] The Governor responded to this urging and the Legislature passed the 1966 reapportionment bill which he signed into law.

The 1970 federal census took place in due course. The 67th session of the Minnesota Legislature convened in

January 1971 and its committees immediately began to consider possible reapportionment plans. But it was not able to produce a reapportionment bill during its regular session, which ended on May 24, 1971. In April 1971, while the Legislature was in regular session, three qualified voters of the State brought an action in the federal district court seeking (1) a declaratory judgment that the 1966 Act was unconstitutional; (2) an injunction restraining the Minnesota Secretary of State and all county auditors from conducting future elections for legislators pursuant to the 1966 Act; and (3) reapportionment of the Legislature by the federal court itself. The Sixty-seventh Minnesota State Senate intervened as a party defendant, as did three other qualified voters. The Democratic Farmer-Labor Party , the Minnesota Farmers' Union, the Minnesota Farm Bureau Federation, the Minnesota Chapter of Americans for Democratic Action, Lieutenant Governor Rudy Perpich and State Representative Jack Fena were admitted as amici curiae.

The court awaited action by the Legislature. Immediately following the end of the regular session, Governor Wendell Anderson called a special session of the Legislature, primarily because a tax bill for the coming biennium had not yet been passed. The special session lasted from May 25-July 31 and from October 12-30, a total of 86 calendar days, during which the Legislature met on 54 days. It was the longest special session in the State's history and cost approximately $600,000.

On October 29, 1971, the Legislature passed a reapportionment bill and adjourned sine die on October 30. The Governor vetoed the bill and did not call another special session of the Legislature.

On June 25, a month after the regular sessions adjournment, a three-judge district court was convened. On November 15, 1971, it declared the 1966 Reapportionment Act to be unconstitutional in its entirety, enjoined the Secretary of State and county auditors from conducting future elections under that Act and appointed two Special Masters (a third was named later) to aid it in formulating a reapportionment plan. On December 3, it announced that it would divide the State into 35 senatorial districts and each senatorial district into three house districts and requested the parties, intervenors and amici to propose apportionment plans on this basis.

On January 25, 1972, the federal district court entered its final plan of apportionment and ordered 1972 elections under the new plan, "or a constitutional plan adopted after this date by the State of Minnesota," for all positions in the Senate and House.[13/] The Minnesota Senate appealed to the Supreme Court of the United States from the orders of the three-judge federal District Court. The Supreme Court concluded that the District Court had erred in reducing the size of the Minnesota Legislature, and summarily vacated its orders and remanded the case for further proceedings "promptly to be pursued."[14/] As a guide to the federal district court, the Supreme Court stated:

> We do not disapprove a court-imposed minor variation from a State's prescribed figure when that change is shown to be necessary to meet constitutional requirements. And we would not oppose the District Court's reducing, in this case, the number of representatives in the Minnesota house from 135 to 134, as the parties apparently have been willing to concede. That action would fit exactly the 67th district pattern.[15/]

III LESSONS FROM MINNESOTA EXPERIENCE

It seems clear that even a constitutional directive to the Legislature to reapportion itself periodically will not assure that this will be done. The political impact of reapportionment upon the contending political parties and upon incumbent legislators is almost guaranteed to produce stalemate whenever the Legislative and Executive branches of government are controlled by different political parties. When both the Legislative and Executive branches of government are controlled by the same political party, there is always great danger that the resulting reapportionment will be unfair to the party out of power.

Recent experience, therefore, throws some doubt on the wisdom of the view expressed by the United States Supreme Court in Reynolds v. Sims that "legislative apportionment is primarily a matter for legislative consideration and determination." 16/ At the same time, it also underscores the wisdom of the three-judge federal district court which hesitated to apportion the Legislature in 1966. The court explained:

> [T]he courts are not designed for the purpose of drafting legislative reapportionment plans. We are not equipped with the expert staff and manpower necessary for gathering, by public hearing, or otherwise, the required basic data and diverse, political, geographical and social viewpoints necessary to frame an equitable and practical reapportionment plan. Judges are not ideally suited by training or experience artfully to perform the task. We are basically interpreters, not makers of the law.

> We are not unmindful that the courts do have authority to decree reapportionment, but this is a power to be exercised only in the extraordinary situation where the Legislature failed to do so in a timely fashion after having had an adequate opportunity to do so. . . .[17]

The initial, aborted effort of the federal district court to reapportion in 1972 made it very difficult for the political parties to prepare for the 1972 election. Primaries are scheduled for September 12. Legislative candidates must file between July 5 and July 18 and it was not until May 30 that any candidate knew the contours of the district in which he might wish to run. Furthermore, Minnesota law requires that a legislative candidate establish residence in his district by May 7. Since the Supreme Court's decision was handed down April 29, 1972, the Court recognized that this deadline could not be met. Accordingly, it stated that the District Court "has the power appropriately to extend the time limitations imposed by state law." [18]

Clearly it is desirable that the state should act so as to make it unnecessary for the federal courts to intervene in its political affairs. It is equally desirable to minimize the participation of state courts in these political matters so as not to risk jeopardizing the trust and confidence that should be reposed in courts when they perform their other judicial functions.

The constitutional procedure for periodic reapportionment and redistricting which we recommend attempts to avoid the

difficulties encountered in our past experience. We propose to take the task of reapportionment away from the Legislature and impose it upon a commission.

Before we present our recommendation in detail, it may be helpful to indicate how the constitutions of other States handle the problem of reapportionment.

IV. SYSTEMS OF APPORTIONMENT IN OTHER STATES

Ten states provide an alternative procedure for reapportionment if the Legislature fails to reapportion itself. But in the first instance they impose the duty of apportionment upon the Legislature itself. Eight states bypass the Legislature entirely and provide for initial reapportionment and redistricting by some agency other than the Legislature. No uniformity is apparent in the systems actually used by each group of states. Appendix I sets forth the constitutional provisions of these states.

A. States Which Look To Legislature To Reapportion Itself But Provide An Alternative Procedure If Legislature Fails To Perform Its Duty.

1. CALIFORNIA

Article IV, section 6 of the California Constitution requires the Legislature to reapportion itself at its first regular session after each Federal census. But if it fails to do so, a Reapportionment Commission is created to perform the task. The Commission consists of the Lieutenant Governor, who is its chairman; the Attorney General; State Controller; Secretary of State and State Superintendent of Public Instruction.

2. CONNECTICUT

Section 6a of the Connecticut Constitution requires the General Assembly to reapportion itself at its first regular session after each Federal census, but by a vote of at least two-thirds of the membership of each House. If it fails to do so by the April 1 next following the completion of the census, the Governor is required to appoint an eight-member Commission to undertake the task. The president pro tempore of the Senate, the Speaker of the House of Representatives, the minority leaders of the Senate and House each designate two members.

The Commission must act by July 1 next succeeding the appointment of its members. Six of its eight members must approve its reapportionment plan. If it fails to act by July 1, a three-member board must be empaneled to accomplish the task by October 1 next succeeding its selection. The Speaker and the minority leader of the House of Representatives are each required to designate as one member of the board a judge of the state's Superior Court. The two members of the board so designated select an elector of the state as the third member.

3. Illinois

The Illinois Constitution, Section 3, directs the General Assembly to redistrict itself, after each Federal census, into compact and contiguous districts which are substantially equal in population. If no redistricting plan is in effect by June 30 of the year following the census, a bipartisan Legislative Redistricting Commission to do the redistricting must be formed by July 10. The Commission is to consist of eight members, no more than four of whom may be members of the same political party. Four members are to be legislators, one Senator appointed by the President of the Senate, one Senator appointed by the Minority Leader of the Senate, one Representative appointed by the Speaker of the House of Representatives and one Representative appointed by the Minority Leader of the House of Representatives and four members are to be non-legislators, one of whom is appointed by each of the four chief officials of the Legislature.

By August 10, the Commission must file with the Secretary of State a redistricting plan approved by at least five members. If it fails to do so, the Supreme Court is required, by September 1, to submit the names of two persons, not of the same political party, to the Secretary of State. By September 5

the Secretary of State must select the "tie-breaker" by lot. A redistricting plan approved by at least five members must be filed with the Secretary of State by October 5.

4. Maine

Article IV, section 3 of the Maine Constitution provides that if the Legislature should fail to apportion itself, the Supreme Judicial Court of the State shall do so.

5. Maryland

Article III, section 5 of the Maryland Constitution requires the Governor to prepare a plan for legislative districting and apportionment after each federal census. The plan must be presented to the Maryland General Assembly which may then, by law, enact it or a plan of its own. If it fails to do so within a specified time, the plan proposed by the Governor becomes law.

6. North Dakota

Article II, section 35 requires the Legislature to reapportion itself after each Federal census. If it fails to do so, the task is imposed upon the Chief Justice of the Supreme Court, the Attorney General, Secretary of State, and the majority and minority leaders of the House of Representatives.

7. Oklahoma

Article V, section 11A of the Oklahoma Constitution makes it the duty of the Legislature to reapportion after each Federal census. If it fails to do so within the time specified, then the task is imposed upon an Apportionment Commission composed of the Attorney General, Secretary of State, and the State

8. Oregon

Article IV, section 6 of the Oregon Constitution imposes the duty of reapportionment after each Federal census upon the Legislature. If the Legislature acts, its reapportionment plan may be reviewed by the state Supreme Court at the instance of any qualified elector. If the Supreme Court invalidates the Legislature's plan, it is required to direct the Secretary of State to draw up a plan. This plan, in turn, is subject to judicial review until such time as the Court approves it. When it finally does so, it files the plan with the Governor and it becomes law upon such filing.

If the Legislature fails to act within a specified time, the Secretary of State is required to draw a reapportionment plan, subject to review, as explained above, by the state Supreme Court.

9. South Dakota

Article III, section 5 of the South Dakota Constitution requires the Legislature to reapportion its membership after each Federal census. If the Legislature fails to do so, the task must be undertaken by the Governor, Superintendent of Public Instruction, Presiding Judge of the Supreme Court, Attorney General and Secretary of State.

10. Texas

Article III, section 28 of the Texas Constitution, imposes the duty of reapportionment after each Federal census upon the Legislature. If the Legislature fails to do so within the specified time, the task devolves upon the Legislative Redistricting Board of Texas. This Board is composed of five members -- the Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office.

The state Supreme Court is empowered to compel the Board to perform its duty.

B. States Which Bypass Legislature And Provide For Initial Reapportionment And Redistricting By Some Agency Other Than Legislature Itself

1. Alaska

Article VI, section 3 of the Alaska Constitution empowers the Governor to reapportion the Alaska House of Representatives after each Federal census. It requires him to appoint a Reapportionment Board to advise him in the performance of this task. Section 8 provides that the Board must consist of five members, appointed without regard to political affiliation, none of whom may be public employees or officials and at least one of whom must be appointed from the Southeastern, Southcentral, Central and Northwestern Senate Districts. Within 90 days following the official reporting of the Federal census, the Board must submit a reapportionment and redistricting plan to the Governor. Within 90 days after receiving the plan, the Governor must issue a proclamation of reapportionment and redistricting and explain any change he made from the Board's plan.

Apparently, once the election districts for the House of Representatives are fixed, the Board and Governor also determine which districts shall be included in each senatorial district.

2. Arkansas

Article 8, section 1 of the Arkansas Constitution makes it the "imperative duty" of a Board of Apportionment -- consisting of the Governor, the Secretary of State and the Attorney General -- to apportion legislative representatives in accordance with the provisions of the Constitution. Any citizen or taxpayer may bring an action in the state Supreme Court to compel the Board to perform its duties.

Proceedings "for revision" of the Board's work may be instituted in the Supreme Court of Arkansas. But the court may substitute its plan for that of the Board only if it finds that the Board acted arbitrarily or abused its discretion.

3. Hawaii

Article III, section 4 of the Hawaii Constitution requires reapportionment every eighth year beginning in 1973. For this purpose, it creates a Legislative Reapportionment Commission consisting of nine members -- two selected by President of Senate; two, by Speaker of House; one, by the members of the House belonging to the Party or Parties different from that of the Speaker; one, by the members of the Senate belonging to the Party or Parties different from that of the President of the Senate; two, by the latter two members. The eight members so selected, by a three-fourths vote, choose the ninth member, who acts as Chairman.

The Commission must present a reapportionment plan within 120 days from the date on which it is formally constituted. No member of the Commission is eligible to become a candidate for election to either house in either of the first two elections under the plan.

Any registered voter is authorized to bring suit in the Supreme Court of Hawaii to compel the Commission to perform its duty or "to correct any error made in a reapportionment plan."

4. Michigan

Article IV, section 6 of the Michigan Constitution imposes the task of reapportionment after each Federal census upon an eight-member Commission on Legislative Apportionment. Four of the eight are to be selected by the State organization of the political party whose candidate for Governor received the highest vote at the last general election at which a Governor was elected preceding each apportionment; the other four are to be selected by the state organization of the political party whose candidate for Governor received the next highest vote at such election. If a candidate for Governor of a third political party received more than 25 percent of the vote at such election, the Commission membership is expanded to 12 and the state organization of the third party selects four members.

Geographic representation is required on the Commission.

Members of the Commission are not eligible for election to the Legislature until two years after the apportionment in which they participated becomes effective.

The Commission is required to complete its work within 180 days after all necessary census information

is available. If a majority of the Commission cannot agree on a plan, each member of the Commission, individually or jointly with other members, may submit a proposed plan to the State Supreme Court. The Supreme Court must then decide which plan complies most accurately with Constitutional requirements and direct that it be adopted by the Commission.

5. Missouri

a. House of Representatives

Article IV, section 2 of the Missouri Constitution imposes the duty of reapportioning the House of Representatives after each federal census upon a Reapportionment Commission. Two persons are to be nominated for membership on the Commission by each congressional district committee of the political party casting the highest vote for Governor at the last preceding election. Two additional persons are to be nominated for membership on the Commission by each congressional district committee of the political party casting the next highest vote at such election.

The lists of nominees are to be submitted to the Governor who is empowered to appoint one person from each list to the Commission.

If any congressional district committee fails to submit a list, the Governor is required to choose a member from the district in question and from the political party of the committee that failed to act.

Members of the Commission are disqualified from holding office as members of the legislature for four years following the date on which the Commission filed its final apportionment plans.

Within five months of its appointment, the Commission is required to publish a tentative reapportionment plan and hold public hearings to hear any objections to it. Within six months of its appointment, the Commission is required to file its final plan with the Secretary of State. The final plan must have the approval of seven-tenths of the Commission's members.

If the Commission fails to act within the specified time, the task of reapportioning the House of Representatives devolves upon the commissioners of the State Supreme Court.

b. Senate

Article III, section 7 of the Missouri Constitution imposes the task of re-apportioning the Senate after each federal census upon a 10-member Senatorial Apportionment Commission. Ten persons are to be nominated for membership on the Commission by the state committee of the political party casting the highest vote for Governor at the last preceding election. Ten additional persons are to be nominated for membership on the Commission by the state committee of the political party casting the next highest vote at such election.

To be valid, the Commission's reapportionment plan must be approved by seven-tenths of its members.

If the Commission fails to act within six months of its appointment, the task of reapportioning the Senate devolves upon the commissioners of the State Supreme Court.

The lists of nominees are to be submitted to the Governor who is empowered to appoint five persons from each list to the Commission.

If either of the party committees fails to submit a list of nominees, the Governor is required to choose the five members from the political party of the committee that failed to act.

Members of the Commission are disqualified from holding office as members of the Legislature for four years following the date on which the Commission filed its final apportionment plan.

6. New Jersey

Article 4, section III of the New Jersey Constitution imposes the task of reapportionment and redistricting after each Federal Census upon a 10-member Apportionment Commission. Five members are to be appointed by the chairman of the State Committee of the political party whose candidate for Governor received the largest number of votes at the most recent gubernatorial election. Five members are to be appointed by the chairman of the State Committee of the political party whose candidate for Governor received the next largest number of votes at such election. Each state chairman, in making such appointments, is required to give due consideration to the representation of the various geographical areas of the State.

The Commission must act within one month of the receipt by the Governor of the official federal decennial census for the state or on or before February 1 of the year following the year in which the census is taken, whichever date is later.

If the Commission fails to act within the specified time, it must so notify the Chief Justice of the State Supreme Court who is then required to appoint an eleventh member of the Commission. The Commission must then act within one month after the eleventh member is appointed.

7. Ohio

Article XI, section 10 of the Ohio Constitution requires a board consisting of the Governor, State Auditor and Secretary of State, or any two of them, after each Federal census, to ascertain and determine "the ratio of representation, according to the decennial census, the number of representatives and senators each county or district shall be entitled to elect, and for what years within the next ensuing ten years. This power has been held to include the power to redistrict.

8. Pennsylvania

Article II, section 17 of the Pennsylvanis Constitution imposes the duty of reapportioning after each Federal census upon a Legislative Reapportionment Commission consisting of five members -- the majority and minority leaders of both the Senate and House of Representatives and a member and chairman selected by the four. If the four are unable to agree on a chairman, a majority of the entire membership of the State Supreme Court will appoint him.

The Commission is required to file a preliminary reapportionment plan, to which any persons aggrieved by it may file exceptions. After considering any exceptions that may be filed, the Commission is required to issue its final plan.

If the Commission fails to act within the specified time, the duty of reapportionment devolves upon the State Supreme Court.

V. Past Recommendations For Minnesota

It may be of interest also to indicate the proposals with regard to reapportionment procedures which have been made by Minnesota citizens' and groups in the past.

A. The 1948 Constitutional Commission

The 1948 Constitutional Commission recommended that the duty of reapportionment be imposed upon the Legislature in the first instance.[19] If the Legislature failed to discharge its duty, the Governor would be empowered to appoint a Commission of 10 members to reapportion the Legislature. He would choose five members from a list of 10 qualified voters submitted to him by the state committee of the political party casting the highest vote for Governor in the last preceding election and 5 from a list of 10 submitted by the political party casting the next highest vote in that election.[20] If the Commission failed to reapportion, then at the next election, senators would be elected at large, four from each congressional district, and representatives would be elected on the basis of one from each county.[21]

B. The 1959 Citizen-Legislator Committee on Reapportionment

This Commission, appointed by Governor Freeman, also recommended that the duty of

reapportionment be imposed upon the Legislature in the first instance. If the Legislature failed to discharge this duty, it recommended that the duty be assumed by a Commission of district judges designated by and representative of every judicial district in the state.

During the 67th session of the Legislature, Senators Hughes, Ashbach and Brown introduced a bill embodying a modified version of the recommendation of the 1959 Committee.[22] Under the bill, a panel of three (state) district judges would be given the task of reapportionment if the Legislature failed to act by a specified date. The majority and minority leaders of the House of Representatives and Senate would meet with the Chief Justice of the State Supreme Court and proceed to strike the names of district judges until only three remained. The remaining three would constitute the reapportionment panel.

C. The 1965 Bipartisan Reapportionment Commission[23]

This commission, too, recommended that the duty of reapportionment be imposed upon the Legislature in the first instance. If the Legislature failed to discharge its duty, the task would devolve upon a bipartisan commission.

D. Senator Nicholas Coleman's Proposal

Senator Coleman has suggested that the task of reapportionment be imposed upon a body consisting of the Governor, Attorney General, Secretary of State, President Pro Tempore of the Senate (or other person selected by the majority), a member of the Senate minority selected by the minority, the Speaker of the House, a minority member of the House selected by the minority, one Democrat selected by the State Chairman of the State Democratic-Farmer-Labor Party and one Republican selected by the State Chairman of the State Republican Party.

E. National Municipal League's Model State Constitution

The Model State Constitution imposes the duty of reapportionment upon the Governor, with the advice of a nonpartisan board.[24] It does not state how this board should be constituted.

VI. Recommendations

As has been noted, there is great variety in the states' constitutional provisions for periodical reapportionment. We know of no study which has been made of the relative effectiveness of the various provisions. The selection of one method over another can be based only on practical political judgment made in the light of Minnesota's experience with legislative self-apportionment. All we claim for our recommendations is that they are based upon such judgment.

We think our recommendations can best be presented by suggesting the text of the amendments to Article IV, sections 1, 2, 23 and 24 which we propose, with an accompanying commentary.

A. Proposed Amendment of Article IV, Section 1.

> Composition of legislature; length of terms and length of session. Section 1. The legislature shall consist of the Senate and House of Representatives. The Senate shall be composed of members elected by the qualified voters at the general election for a term beginning at noon of the second Tuesday in January next following the election and ending at noon of the second Tuesday in January four years thereafter, except that there shall be an entire new election of all the Senators at the election of Representatives next succeeding each new apportionment provided for in this article.

The House of Representatives shall be composed of members elected by the qualified voters at the general election for a term beginning at noon of the second Tuesday in January next following the election and ending at noon of the second Tuesday in January two years thereafter.

Representatives shall be elected at the general election held in each even numbered year. Senators shall next be chosen at the general election held in the year (an even numbered year) and at the general election every four years thereafter, except as provided herein.

A special session of the legislature may be called as otherwise provided by this constitution.

Comment. The recommended changes in Article IV, section 1 merely make clearer what are the present constitutional provisions. In Honsey v. Donovan, the three-judge federal district court expressed the opinion that the last clause of the existing section 24 of Article IV, which we recommend bringing up to section 1, "would seem to require an election of senators at the very next election following reapportionment, even though four years had not elapsed since their last election. . . ."[25/] The three-judge federal district court in Beens v. Erdahl so held.[26/] We see no reason to change this constitutional provision. It eliminates any federal constitutional question that may be raised because of the delay in Senate reapportionment. And it ensures that the Senate, like the House, will reflect any shifts of population in the state as rapidly as it is practicable for it to do so.

Under this provision, there will be an election of senators in 1972, 1976, 1980, 1982, 1986, 1990, 1992, etc. The senators elected in the year in which the federal census is taken will serve only a two-year term.

> The legislature shall meet at the seat of government in regular session in each odd numbered year at the time prescribed by law for a term not exceeding one hundred twenty(120)legis-

lative days; and no new bill shall be introduced in either branch, except on the written request of the Governor, during the last thirty (30) days of such sessions.

A special session of the legislature may be called as otherwise provided by this constitution.

Comment. For the present, we are recommending no change in these provisions of the Constitution, but are setting them forth to show where our recommended changes would fit.

B. Proposed Amendment Of Article IV, Section 2

Number of members. Section 2. The number of members who compose the Senate shall be prescribed by law, but shall not exceed sixty-seven (67). The number of members who compose the House of Representatives shall be prescribed by law, but shall not exceed one hundred thirty-five (135).

Comment. The existing Section 2 sets no practical limit on the size of the Legislature. Minnesota's recent reapportionment acts have tied the size of the Legislature to the particular apportionment and districting plan adopted by the act in question.

Minnesota, which ranks 19th among the states in population and 14th in land area, presently has the largest state Senate in the nation and the tenth largest state House of Representatives. Compared with the other ten states that have populations of between 2.5 million and 4.0 million and areas ranging from 40,000 to 82,000 square miles, Minnesota has the largest state House of Representatives. Throughout its history, as we have indicated above, Minnesota has sought to solve difficult apportionment problems by increasing the size of its Legislature until the Legislaure attained its present, inordinate size. The Apportionment Act of 1860 was the only one in the history of Minnesota that did not in-

crease the size of the legislature; in fact, it reduced the Senate from 37 to 21 and the House from 80 to 42.

Only a constitutional limit on the size of the Legislature will discourage this unwise expediency. We are strongly of the view that the size of the Legislature should not be further increased for the foreseeable future. We think the question of the size of the Legislature should be left to the Legislature to determine from time to time.

C. Proposed Amendment of Article IV, Section 23.

Census Enumeration, apportionment and districting. Section 23. Census enumeration. (a) The legislature shall have the power to provide by law for an enumeration of the inhabitants of this state.

Standards for apportionment and districting (b)(1). The representation in the House of Representatives and the Senate shall be apportioned equally throughout the different sections of the state, in proportion to the population thereof.

(2). Contressional, senatorial and representative districts shall contain as nearly as practicable an equal number of persons, as determined by the most recent federal or state census. Minor deviations from the population norm, determined by dividing the population of the state by the number of districts in question, shall be permitted in order to take into consideration the factors of contiguity, compactness, extraordinary natural boundaries and the maintenance of the integrity of counties, cities, incorporated towns and townships, but only if such criteria are uniformly applied.

(3) The entire state shall be divided into as many separate congressional, senatorial, and representative districts as there are congressmen, senators and representatives respectively. No representative district shall be divided in the formation of a senate district. The congressional, senatorial and representative districts, respectively, shall be separately numbered in a regular series.

(4) Each congressional, senatorial and representative district shall be composed of geographically contiguous territory. Unless absolutely necessary, no county, city, incorporated town or township shall be divided in forming either a congressional, senatorial or representative district. If such a division is absolutely necessary and a choice is possible among more than one such unit, cities or towns shall be divided in preference to counties and more populous units shall be divided in preference to less populous ones. Consistent with these standards, the aggregate length of the boundary lines of each congressional, senatorial and representative district shall be as short as possible.

Comment. The existing Constitution prescribes but a few standards for apportionment and districting -- that representation in both houses of the state legislature should be apportioned equally throughout the different sections of the state in proportion to the population thereof; that senators shall be chosen by single districts of convenient contiguous territory; and that no representative district shall be divided in the formation of a senate district.

We have kept these standards and added others to discourage gerrymandering.

The three-judge federal district court sanctioned minor deviations from the population norm not to exceed two (2) percent.[27/] We propose to permit such minor deviations if necessary because of extraordinary natural boundaries or in the interest of contiguity, compactness, and the maintenance of county and political subdivision lines. To make certain that even minor deviations from the popular norm will not be used for gerrymandering purposes, we propose that they be permitted only if they are used for the purposes indicated in a uniform fashion.

We do not recommend that the two (2) percent limit, or any other limit, on deviations from the population norm be written into the Constitution. We would leave this matter to be determined by the courts from case to case. But we should point out that the U.S. Supreme Court has required that a good-faith effort be made in congressional- and presumably state legislative-districting to achieve "precise mathematical equality" of population in each district.[28/]

We also propose to eliminate multi-member districts in the House, because of the possibility of submerging the interests of racial, ethnic, economic or political minorities in such districts. The three-judge federal district court eliminated all multi-member House districts in the most recent reapportionment/redistricting.[29/]

We considered the advisability of deleting the constitutional prohibition (contained in the existing section 24) against dividing representative districts in forming senatorial districts. We recognize that this prohibition makes the task of districting on a population basis more difficult. But we have concluded that it provides an additional safeguard against gerrymandering and is justified for this reason.

The existing Constitution requires that senatorial districts shall consist of convenient contiguous territory. We have tried to define this requirement a little more preceisely, viewing a district as "convenient" if the aggregate length of its boundary lines is as short as possible.

It is recognized that even if our suggested standards are met, it may still be possible to cancel out or minimize the voting strength of racial, economic or political elements in a particular area. It is expected, however, that the danger of various kinds of gerrymandering will be lessened by entrusting the apportionment/districting function to a commission constituted as we propose. It is not feasible, however, to attempt to specify any additional standards in the Constitution, for there is no general agreement on what they should be.

D. Proposed Amendment of Article IV, Section 24.

Procedure for periodic reapportionment and redistricting, Section 24. Frequency and time of Commission's action. (a) In each year following that in which the Federal decennial census is officially reported as required by Federal law, or whenever reapportionment is required by court order, or because the number of members who compose the Senate or House has been altered by law, the Apportionment and Districting Commission created under this section shall apportion anew the Senators and Representatives among the several districts and prescribe anew the bounds of the congressional districts in the state.

In performing these duties, the Commission shall be guided by the standards set forth in Section 23 of this Article and shall assure all persons fair representation.

Comment. The Supreme Court of the United States has indicated that the federal Constitution does not require reapportionment more frequently than after each federal

decennial census. The requirement formerly in section 23 of Article IV of the Minnesota Constitution that the legislature take a population census every 10 years beginning in 1865 has been eliminated. The recommended section 24(a) requires reapportionment only after each federal decennial census, even if the Legislature chooses to exercise the power granted it by the recommended section 23 to conduct a state census.

It may be that the federal government, with the aid of statistical and computer techniques, will begin to publish official population statistics more frequently than once every 10 years, or that the Legislature may decide to conduct a state census. Even so, we do not think that the State Constitution should require reapportionment more frequently than after each decennial census. There are advantages to be gained from keeping each districting and apportionment plan stable for a decade.

> Governor's request for appointment of Commission members. (b) Not later than January 15 of the year following that in which the Federal decennial census is officially reported as required by Federal law, the Governor shall request the persons designated herein to appoint members of the Apportionment and Districting Commission, as hereinafter provided.

> Composition of Apportionment and Districting Commission. (c)(1). The Apportionment and Districting Commission shall consist of

thirteen (13) members and the concurrence of eight (8) of its members shall be required to adopt a final plan of apportionment and districting.

The Speaker and Minority Leader of the House of Representatives, or two (2) Representatives appointed by them, shall be members. The Majority and Minority Leaders of the Senate, or two Senators appointed by them, shall be members.

Each of the state central committees of the two (2) political parties whose candidates for Governor received the highest number of votes at the most recent gubernatorial election shall appoint two (2) members. If a candidate for Governor of a third political party has received twenty (20) percent or more of the total gubernatorial vote at such election, the state central committee of the third political party shall appoint two (2) members. If each of the candidates for Governor of four (4) political parties has received twenty (20) percent or more of the total gubernatorial vote at such election, the state central committee of each political party shall appoint two (2) members.

Within ten (10) days after they are requested by the Governor to appoint Commission members, the Speaker and Minority Leader of the House of Representatives, the Majority and Minority Leaders of the Senate, and the state central committees of the political parties shall certify the members they have appointed to the Secretary of State, or notify the Secretary of State of their failure to make any appointment.

Within three (3) days after receiving notice that an appointing authority has failed to appoint its quota of members, the Secretary of State shall so inform the Chief Justice of the State Supreme Court. Within ten (10) days after such information has been received, a majority of the entire membership of the Supreme Court shall appoint the necessary number of Commission members and certify them to the Secretary of State.

The Commission members so certified shall meet within seven (7) days of their appointment and within seventeen (17) thereafter shall elect, by unanimous vote, the number of members necessary to complete the Commission and certify them to the Secretary of State, or notify the Secretary of State that they are unable to do so. Within three (3) days after receiving notice of failure to complete the membership of the Commission, the Secretary of State shall so inform the Chief Justice of the state Supreme Court. Within seventeen (17) days after such information has been received, a majority of the entire membership of the Supreme Court shall appoint the members necessary to complete the Commission and certify them to the Secretary of State.

(2) Except for the Speaker and Minority Leader of the House of Representatives, the Majority and Minority Leaders of the Senate, their designees, notaries public, members of the armed forces reserves and officers and employees of public educational institutions, no United States Senator, member of the United States House of Representatives, elected official of state or local government, and no employee of the federal, state or local government, shall be eligible for membership on the Commission.

In making their appointments, the State Central Committees, the eight (8) original Commission members and the State Supreme Court shall give due consideration to the representation of the various geographical areas of the State.

Any vacancy on the Commission shall be filled within five (5) days by the authority that made the original appointment.

A majority of all the members of the Commission shall choose a Chairman and a Vice Chairman and establish its rules of procedure.

(3) Members of the Commission shall hold office until the new apportionment and districting in which they participated becomes effective. Except for the Speaker and Minority Leader of the House of Representatives, the Majority and Minority Leaders of the Senate and their designees, they shall not be eligible for election to Congress or the State Legislature until the general election following the first one under the apportionment and districting in which they participated.

(4) The secretary of State shall be Secretary of the Commission without vote and in that capacity shall furnish all technical services requested by the Commission. Commission members shall receive compensation at a rate not less than $35 per day plus expenses. The Legislature shall appropriate funds to enable the Commission to perform its duties.

Comment. As indicated above, we recommend that reapportionment and redistricting be taken entirely out of the hands of the Legislature. We are aware that these processes involve legitimate political considerations of which the Legislature itself is most aware. But we have concluded that our State's experience with reapportionment and redistricting by the Legislature justifies our recommendation.

It is not advisable to ask the Legislature to take action which effects the self-interest of individual legislators so directly. A form of bipartisan gerrymandering intended to protect incumbents often is the result of

such action. When it is not, and the same political party controls both the legislative branches of government at the time of the reapportionment and redistricting, partisan gerrymandering may result. These latter considerations are also present in congressional redistricting and, therefore, we recommend that this task, too, be entrusted to a Commission.

Strong arguments have been made that the task of reapportionment and redistricting should be entrusted to a nonpartisan commission. It has been suggested that a nonpartisan commission might be comprised of "university presidents, bar association presidents, or incumbents in other prestigious posts of a non-political nature."[30/] Yet it is doubtful that there would be general agreement that even a commission so composed would be truly nonpartisan.

The Hughes-Ashbach-Brown bill is another attempt at creating a nonpartisan commission. But we seriously doubt the wisdom of imposing the duty of reapportionment and redistricting upon any group of judges (particularly judges who must stand for re-election), except as a last resort.

More important, we do not think it wise to try entirely to insulate reapportionment and redistricting, which has great political impact, from the political process. This is doubly important when the legislature is being relieved of the task of reapportioning itself.

A member of the Michigan Bipartisan Apportionment Commission wisely pointed out:

> Every [reapportionment and redistricting] plan has a political effect, even one drawn by a seventh grade civics class whose parents are

> all nonpartisans and who have only the United States census data to work with. Even though they drew such a plan with the most equal population in districts, following the maximum number of political subdivision boundaries and with the most regular shapes, it could very well result in a landslide election for a given political party.[31]

The Apportionment and Districting Commission we propose to constitute is strictly neither nonpartisan nor bipartisan. The recommendations we make to involve the leadership of the State Senate and House of Representatives and the political parties (including third or fourth parties) in the appointment of Commission members assure that political realities and varying political views will be taken into account.

This leadership will appoint eight (8) of the thirteen (13) Commission members. The eight (8) so appointed will select the remaining five (5) member. A unanimous vote is required for this purpose. If the eight (8) are unable to agree, the task of selection is imposed upon the entire membership of the State Supreme Court. No federal, state or local official or employee may be appointed to the Commission by the leadership of the political parties (excluding the legislative leaders), the original eight (8) Commission members or the State Supreme Court.

This method of selection holds out the greatest promise

that the five (5) Commission members who may hold the balance of power will be acceptable to the other eight (8) and the political interests the latter represent.

Eight (8) Commission members must concur to approve a final apportionment and districting plan. This means that if the original eight (8) form blocs and disagree, the bloc that carries the day will have to win the votes of four out of five of the remaining members. Together with the method of selecting these remaining members and the standards for apportionment and districting recommended above, this requirement is another safeguard against the danger of gerrymandering.

Activities of Apportionment and Districting Commission. (d)(1) The Commission shall hold such public hearings in the different geographic areas of the State as it may deem necessary or advisable to give individual citizens and interested groups of citizens the opportunity to submit proposed apportionment and districting plans or otherwise to testify, orally or in writing, concerning their interest in apportionment and districting.

(2) Not later than six (6) months after the Commission has been finally constituted, or the population count for the State and its political subdivisions as determined by the Federal decennial census is available, whichever is later in time, the Commission shall file its final reapportionment and redistricting plans and maps of the districts with the Secretary of State.

(3) Within ten (10) days from the date of such filing, the Secretary of State shall publish the final plans once in at least one newspaper of general circulation in each congressional, senatorial and representative district. The publication shall contain maps of the State showing the new congressional districts, the complete reapportionment of the Legislature by districts and a map showing the new congressional, senatorial and representative districts in the area normally served by the newspaper in which the publication is made. The publication shall also state the population of the congressional, senatorial, and representative districts having the smallest and largest population, respectively, and the percentage variation of such districts from the average population for congressional, senatorial and representative districts.

(4) The final plans shall have the force and effect of law upon the date of such publications.

(5) The Secretary of State shall keep a public record of all the proceedings of the Commission.

Comment. Because the apportionment and Districting Commission is entrusted with legislative powers of great mo-

ment to the political life of the State, it is required to undertake a series of public hearings in different parts of the State before adopting its final apportionment and districting plan. Public participation in the work of the Commission in this manner will help to enlighten the Commission and win public acceptance of its final plan.

Judicial review of Commission action. (e) Within thirty (30) days after any reapportionment and redistricting plan adopted by the Commission is published by the Secretary of State, any qualified voter may petition the state Supreme Court to review the plan. The state Supreme Court shall have original jurisdiction to review such plan, exclusive of all other courts of this State.

If a petition for review is filed, the state Supreme Court shall determine whether such plan complies with the requirements of this Constitution and the United States Constitution. If the state Supreme Court determines that such plan complies with constitutional requirements, it shall dismiss the petition within sixty (60) days of the filing of the original petition. If the state Supreme Court, or any United States court, finally determines that such plan does not comply with constitutional requirements, the state Supreme Court, within sixty (60) days of the filing of the original petition or thirty (30) days of the decision of the United States court, shall modify the plan so that it complies with constitutional requirements and direct that the modified plan be adopted by the Commission.

Failure of Apportionment and Districting Commission to Act. (f). If the Commission fails to adopt a final plan to apportion anew the Senators and Representatives among the several districts and to prescribe anew the bounds of such districts, or a final plan to prescribe anew the bounds of congressional districts, by the time

specified herein, each member of the Commission, individually or jointly with other members, may submit a proposed plan or plans to the state Supreme Court within thirty (30) days after the date for Commission action has expired. Within ninety (90) days after such submission, the Supreme Court shall select the plan which it finds most closely satisfies the requirements of this Constitution and, with such modifications as it may deem necessary to completely satisfy these requirements, shall direct that it be adopted by the Commission and published as provided herein. If no Commission member submits a plan by the time specified, the Supreme Court, within four (4) months after the date for the submission of individual member plans has expired, shall itself prescribe anew the bounds of congressional districts or apportion anew the Senators and Representatives among the several districts and prescribe anew the bounds of such districts.

Applicability of any reapportionment or redistricting. (g). Each new districting and apportionment made in accordance with the provisions of this Article shall govern the next succeeding general elections of congressmen, senators and representatives.

Comment. Provision is made for the possibility that eight (8) Commission members may be unable to agree upon an apportionment and districting plan. The task of districting and apportionment is then imposed upon the state Supreme Court, but the Court is required to work with the plan, if any, submitted by one, or a group, of the Commission members which most closely satisfies constitutional requirements. If no plan is submitted by any Commission member - an eventuality which is highly unlikely - the task of reapportionment and

redistricting is imposed upon the state Supreme Court.

The state Supreme Court is given original jurisdiction to review the Commission's plan. The decision of the state Supreme Court, in turn, would be subject to review by the United States Supreme Court.

The following table summarizes the time table which our recommendations impose upon all participants in the reapportionment and redistricting process. Even in the extraordinary case, the process should be completed well in advance of the time reasonably needed by candidates for membership in the Congress and the state Legislature.

Activity in Question	Deadline
Governor's request for appointment of Commission members	January 15, 1981
Certification of Commission members or notification of failure to make requisite appointment	January 25, 1981
Notice by Secretary of State to Chief Justice of failure to make requisite appointment	January 28, 1981
Appointment of necessary members by Supreme Court	February 7, 1981
First meeting of designated and appointed Commission members	February 14, 1981
Election of remaining members or failure to do so	March 3, 1981
Notice by Secretary of State to Chief Justice of failure to elect remaining members	March 6, 1981
Appointment of remaining members by Supreme Court	March 23, 1981
Filing of final plans by Commission	September 22, 1981
Publication and effective date as law	October 2, 1981
Petition for review of Commission action	November 1, 1981
Final State Supreme Court action	January 1, 1982
Review by Supreme Court of United States	?
Submission of individual member plans if Commission fails to act	October 22, 1981

Selection by state Supreme Court of plan or plans	January 22, 1982
Review by Supreme Court of United States	?
State Supreme Court action if individual members fail to submit plans	February 22, 1982
Review by Supreme Court of United States	?

FOOTNOTES

1. Minn. Const. 1857, Schedule section 12 (both versions).
2. See State ex rel. Meighen v. Weatherill, 125 Minn. 336 (1914) and Smith v. Holm, 220 Minn. 486 (1945).
3. 369 U.S. 186 (1962).
4. Magraw v. Donovan, 163 F. Supp. 184 (1958).
5. Id. at 187.
6. For the principal Supreme Court opinions, see Reynolds v. Sims, 377 U.S. 533 (1964); WMCA, Inc. v. Lomenzo, 377 U.S. 633 (1964); Maryland Committee for Fair Representation v. Tawes, 377 U.S. 656 (1964); Davis v. Mann, 377 U.S. 678 (1964); Roman v. Sincock, 377 U.S. 695 (1964); Lucas v. Colorado General Assembly, 377 U.S. 713 (1964); Swann v. Adams, 385 U.S. 440 (1967); Kilgarlin v. Hall, 386 U.S. 120 (1967); Kirkpatrick v. Preisler, 394 U.S. 526 (1969).
7. Honsey v. Donovan, 236 F. Supp. 8 (1964).
8. Id. at 15-16.
9. 163 F. Supp. 184 (1958).
10. Duxbury v. Donovan, 272 Minn. 424 (1965).
11. Honsey v. Donovan, 249 F. Supp. 987 (1966).

12. Id. at 988.

13. Beens v. Erdahl, 336 F. Supp. 715 (1972).

14. Sixty-Seventh Minnesota State Senate v. Beens, 92 S.Ct. 1477 (1972) (The Court's opinion was per curiam; Mr. Justice Stewart dissented).

15. Id. at 1485.

16. 377 U.S. 533, 586 (1964).

17. Honsey v. Donovan, 249 F. Supp. 987, 988 (1966).

18. Sixty-Seventh Minnesota State Senate v. Beens, 92 S.Ct. 1477, 1486 (1972).

19. Report of the Constitutional Commission of Minnesota 23-24 (1948).

20. Id. at 24.

21. Ibid.

22. S.F. 171, 67th Minn. Leg. Ex. Sess., Oct. 19, 1971.

23. See Report of the Governor's Bipartisan Reapportionment Commission, January 15, 1965, 49 Minn.L.Rev. 367 (1965).

24. National Municipal League, Model State Constitution, section 4.04 (rev. 1968).

25. 236 F.Supp. 8, 21 (D. Minn. 1964).

26. 336 F.Supp. at 732.

27. 336 F. Supp. at 719

28. Kirkpatrick v. Preisler, 394 U.S. 526, 530-531 (1969). In this case, a maximum deviation of 3.1 percent was declared unconstitutional in Missouri congressional districting. In Wells v. Rockefeller, 394 U.S. 542 (1969), the Supreme Court invalidated New York congressional districting in which the maximum deviation was 6.6 percent.

29. 336 F.Supp. at 719.

30. McKay, Reappointment Reappraised 27 (1968).

31. A. Robert Kleiner, Democratic member of Michigan Bipartisan Apportionment Commission, National Municipal League Speech, 1966, quoted by Dixon, The Court, The People and "One Man, One Vote," in Reapportionment in the 1970s 20 (Polsby ed., 1971).

A Statement on Proposed Changes in the Method of Apportioning the Legislature

by Robert J. Brown

My proposal is based on the following three premises:

1. The legislature should not reapportion itself in the future. It is too costly, too time consuming and does not lead to the best possible apportionment. A legislative solution is usually: (a) a partisan gerrymander if one faction controls state government; or (b) either a sweetheart bill to protect incumbents or a stalemate if governmental control is divided.

2. So-called citizen reapportionment commissions selected by political parties or by partisan constitutional officers suffer from the strong likelihood of partisanship or stalemate.

3. Reapportionment is a relatively simple, quickly accomplished process if politics is taken out of it. I believe it could be done in about 30 days.

My proposal is essentially the same one I presented to the Commission earlier this year. A panel of state district court judges should do the reapportionment, employing technical staff to do the mechanics under guidelines established by the legislature.

The panel should be selected in a process in which the majority and minority leaders of the legislature alternately

strike names from a list of all state district court judges. The remaining three judges should be the least partisan members of the least political branch of government.

The legislature should be given the constitutional authority to prescribe criteria which could be followed by the panel. For example, the legislature could state the maximum population deviation allowed or the maximum population of communities which should not be split in any reapportionment.

I believe that by having the legislative leaders involved in the process of picking the panel and by permitting the legislature to establish criteria, the concerns of many legislators can be met as to the role of the legislature in the reapportionment process. At the same time this proposal would do more than any other plan I have seen to remove politics from the process of reapportionment.

MINUTES OF THE NATURAL RESOURCES COMMITTEE
OF THE CONSTITUTIONAL STUDY COMMISSION

HELD IN MOORHEAD, MINNESOTA, May 4, 1972

Reporter: Joseph Hudson

Senator Thorup read Rick Holstrom's research paper on Natural Resources. (Copy in file).

Senator Thorup asked for comments on whether there should be an environmental Bill of Rights.

Professor Auerbach questioned whether it would be a proper judicial function to vindicate an environmental Bill of Rights.

Justice Otis replied that he favored a more activist position giving standing to sue to citizens.

Professor Auerbach and Mrs. Barbara Simpson discussed alternative means citizens could use to redress injury, i. e. courts directly vs. administrative agencies.

Governor Elmer Andersen suggested that we are dealing with newer concepts of property rights. Suggested that the approach today was a "stewardship" theory of property.

Professor Auerbach explained there should be no limit to judicial review of administrative action. Court should be able to say the action taken is wrong and then remand to agency for another decision.

Mrs. Barbara Simpson suggested hearings be held in the evening. She urged environmental protections. Suggested Constitutional Study Commission would run into opposition if it attempted to put into the Constitution an environmental Bill of Rights. She said her ecology group would send in testimony later.

NATURAL RESOURCES COMMITTEE HEARING
June 6, 1972 1:30 P.M.
Room 15, State Capitol

Senator Thorup called the hearing to order at 1:45 P.M. in the absence of Chairman Dirlam. He introduced the Committee and then called on the following to testify:

Edmund Bray, St. Paul, Chairman of the Minnesota Chapter of the Nature Conservancy and a member of the Commissioner of Natural Resources Advisory Committee on Scientific and Natural Areas, spoke concerning the State Trust Fund Lands and the current interpretation that such Trust Fund Lands be utilized only as revenue-producing properties. He stated exploitation of their resources will destroy their importance as areas for scientific, educational and aesthetic purposes and urged that the Constitution be altered to permit designation of truly significant natural areas within the State Trust Fund Lands as Scientific and Natural Areas.

Peter Benzian, Minnesota Public Interest Research Group, recommended inclusion of an environmental bill of rights in the State Constitution and offered the following:

1) Every person in this state has an inalienable right to enjoy clean air, pure water, freedom from excessive noise, and the natural, scenic, historic and aesthetic qualities of his environment. This right shall not be abridged or infringed by either governmental or private action.
2) The Legislature shall guarantee this right by providing for the abatement of air and water pollution and of excessive noise, and by providing for the protection of open space areas having special environmental significance, such as wetlands, lakes, timberlands, prairies, historical or scenic sites, shortlines, floodplains, or wilderness areas. Land or water areas owned by or dedicated to the public having such special significance shall not be alienated or substantially altered, in whole or in part, unless the Legislature shall certify in two laws passed not less than six months apart, that such alienation or alteration would not abridge or infringe this right.
3) Each person, on his own behalf or representing a group or class of persons whose rights are infringed or abridged, may enforce this right against any party, governmental, or private, by bringing suit in the courts of this state for monetary damages, injunction, declaratory judgment or other appropriate relief.

He stated the Student Board of Directors of MPIRG has endorsed this proposal.

Howard Vogel, MECCA, stated the recognition of the right to a healthy environment as being both personal and fundamental classifies it as one of those preferred rights secured by substantive due process of law and offered the following considerations for the purpose of drafting a constitutional amendment:

1)Establishment of limits similar to those in the Bill of Rights of the U.S.Constitution beyond which even a majority could not tamper with the environment. For example this might include the extermination of animal species, the destruction of unique natural phenomenon, or the release of environmental toxicants into the environment in quantities dangerous to various elements of the ecology.
2)The requirement that all cost accounting include the quantification of both short and long term ecological costs in the price of goods and services.
3)The prohibition of any tampering with ecological systems unless those who seek to alter those systems, or affect them in anyway, can show that they understand the following: The nature and effect of their actions or effluent, the ecological context in which they are operating, that they have control over the discharges or impact from their proposed course of action. All of this presumes that the actor understands and seeks approval for the overall impact of his action prior to the commencement of such action.
4)An express provision to permit effective participation by individuals in the political and economic decision-making processes which have a substantial impact on their environment.

Bob Lindahl, Pollution Control Agency, stated he supported an environmental bill of rights and would submit a written statement later.

Other written statements received were:

League of Women Voters, support a physical environment beneficial to life, strongly approves of a policy of an environmental bill of rights. The League agrees with the wording of the Illinois Bill of Rights in Section 1, and in Section 2 approve the following: "Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings.", but question the last phrase, "..subject to reasonable limitation and regulation as the General Assembly may provide by law," for it seems to weaken the very basic right of the individual and tends to destroy the purpose of the first clause.

Governor Wendell Anderson, stated he favors consideration of an environmental bill of rights referring to a section of his special message of March 3, 1971 concerning a Constitutional Convention. He submitted a copy of H.F.3100 for Committee consideration which reads as follows:

Sec.1. The public policy of the state and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The law shall provide for the implementation and enforcement of this public policy.

Sec.2. Each person has a right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as may be provided by law.

C. B. Buckman, Deputy Commissioner of the Department of Natural Resources, submitted a copy of the presentation of his Department to the Education Committee of this Commission on March 17th, relative to State Trust Fund Lands.

The hearing adjourned at 2:50 P.M.

MINNESOTA CONSTITUTIONAL STUDY COMMISSION
G-19E Administration Building / St. Paul, Minnesota 55155
(612) 296-6683

The contents of this Report are preliminary only, not the final recommendations of the Commission. Therefore do not make any use of the Report without permission.

REPORT OF THE

NATURAL RESOURCES COMMITTEE

TO THE

CONSTITUTIONAL STUDY COMMISSION

ON

AUGUST 17, 1972

* * * * *

REPRESENTATIVE AUBREY W. DIRLAM, CHAIRMAN
SENATOR STANLEY N. THORUP
MR. ORVILLE J. EVENSON

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TABLE OF CONTENTS

I. Introduction

The Natural Resources Committee was charged with examination of provisions of the Constitution which deal with natural resources. We were also assigned the responsibility of making a recommendation on a proposed "Environmental Bill of Rights".

The Committee has consisted of Representative Aubrey Dirlam, Mr. Orville Evenson, and Senator Stanley Thorup. Speaker Dirlam acted as chairman of the Committee. Mr. Richard Holmstrom of the University of Minnesota Law School served as a staff assistant to the Committee and prepared background papers for our use.

The Committee held two public hearings. One hearing was in Moorhead on May 5th. The other was in St. Paul on June 6th. The testimony presented to us centered on the environmental bill of rights. We also received a summary of testimony originally presented to the Education and Finance Committees on the matter of Trust Fund Lands. We did not believe it necessary to have this testimony repeated.

Our recommendations are in three parts. Part II of this report deals with the proposed Environmental Rights Amendment. Part III discusses the administration of Trust Fund Lands. Part IV considers other articles of the Constitution relating to natural resources.

II. ENVIRONMENTAL BILL OF RIGHTS.

The issue.

The Committee heard a number of witnesses who proposed including an "Environmental Bill of Rights" in the Minnesota Constitution. Such a bill of rights would provide an express recognition of the right of citizens to a healthy environment and articulation of the duty of state government to foster environmental protection. It might also include legal remedies for citizens who believe that their rights are inadequately protected by usual governmental processes.

Present constitutional provisions.

There is no language in the present Minnesota Constitution dealing with this question.

The Bill of Rights in the Minnesota Constitution consists of restrictions on the power of government. It is negative language: the government shall not abridge freedom of speech, the government shall not establish a religion, etc. The entire concept of an Environmental Bill of Rights is the reverse of this. It would recognize a special, affirmative duty on the part of state government to promote a clean and healthy environment.

Thus the introduction of an Environmental Bill of Rights would be a departure from the traditional type of guaranteed right.

General Discussion: The Bill of Rights

There appears to be universal agreement that protection of the environment is a prime duty of modern state government. As

pollution threatens our air and water and other kinds of poorly planned development pose a threat to our forests and lakes, the state has taken firm measures to combat these environmental threats.

The amendment of the Constitution to include a statement of a duty of the state to protect the environment would firmly articulate the importance of environmental matters to the people of Minnesota. It would serve as a constant reminder of this fundamental duty in the basic document of state government.

Procedural rights.

Several witnesses who appeared before the Committee also asked that a constitutional amendment include some recognized and defined procedural rights, so that individual citizens (or groups of citizens) could go to court to enforce environmental rights, if the Legislature was remiss in enacting appropriate environmental legislation or if enforcement agencies failed adequately to enforce such laws. Suits might be brought either against the public enforcement agencies, to require them to impose or enforce more stringent standards, or against individuals or companies who were alleged polluters.

Traditional judicial doctrine has restricted the individual's access to the courts in such cases. Usually a plaintiff must show that he is an affected party, before he has "standing to sue". In some cases this has meant that interested individuals could not bring suit, because they could not show the necessary direct causal connection between the activity complained of and some demonstrable injury to them.

Those who have gone to the courts have also met other substantive and procedural barriers to relief. Parties are normally required to exhaust administrative remedies, before going to the courts. Thus, before seeking judicial relief, the individual must go through the administrative agency. The courts will uphold the decision of the agency if there is "substantial evidence" to support it, thus giving the agency substantial leeway in determining the outcome of the case.

Proponents of an environmental rights amendment would like to have immediate access to the courts and to judicial remedies. If the Legislature or the enforcement agencies fail to adopt adequate standards for pollution control, they would like to have such standards promulgated and imposed by the courts.

At its Moorhead hearing, the Committee also received testimony indicating that judicial resolution of such disputes is not appropriate. Professor Carl Auerbach, a member of the Commission, indicated that judicial procedure is not adequate to handle such multi-party disputes. The controversies often involve a question of balancing economic and social interests. The decision-maker, whether judge or administrator, must weigh the relative damage of a limited degree of pollution against the advantage of relief of regional unemployment, for example. Since, in his view, these decisions are value judgments, they should be taken by officials who are politically responsible for the consequences of their actions. The courts can then determine whether there is adequate basis for the decisions by ordinary processes of judicial review.

Recommendation.

For the reasons which appear below, the Committee recommends adoption of an Environmental Rights Amendment to the State Constitution. We believe that the provisions of the recently adopted Illinois Constitution provide a good model for use to follow. A bill to accomplish this result is included in the appendix to this report. The amendment would include both a declaration of public policy and a procedural section.

Declaration of public policy.

The Committee believes that it is proper for the Constituion to contain a declaration of public policy of the state. Such a declaration would reaffirm the views of the people of Minnesota on protection of the environment. It would act as a constant reminder to the Legislature of this public concern. Protection of the environment is not a transient matter; it deserves constitutional recognition.

A declaration will serve as a guide to legislative, administrative, and judicial action. Clearly, the Constitution cannot contain all of the regulations and rules necessary to protect the environment. Much will remain for statutes, regulations, court and agency decisions, and other governmental action.

We believe the Illinois language declaring the public concern in the environment to be well drafted and appropriate for adoption in Minnesota. As altered to delete references to a particular state, it would provide:

> Section 1. The public policy of the state and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The law shall provide for the implementation and enforcement of this public policy.

Procedural rights.

The Committee also believes that it is proper to include a declaration of the rights of individuals to resort to the courts to enforce their environmental rights. Substantive and procedural barriers to the judicial enforcement of such rights cannot persist in the face of strong public demand for such remedies. If there is a constitutional right, there must be an appropriate remedy.

Again, we believe that the Illinois language strikes the best balance between those who would leave such procedural rights to be spelled out by the Legislature and those who would detail them in the Constitution. As modified to fit Minnesota, the language would require:

> Section 2. Each person has a right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as may be provided by law.

This language would guarantee the existence of an individual remedy. If the Legislature failed to act to regulate such resort to the courts, the individual could proceed in accordance with the ordinary rules of civil procedure. If the Legislature unreasonably limited recourse to the courts, the individual could likewise resort to the courts.

The language would, however, permit the Legislature to prescribe reasonable limitations and regulations for the enforcement of such rights. It might, for example, require resort to the Pollution Control Agency, before individual suits were brought, at least in some cases.

We do not believe that the problems associated with such class action suits have been sufficiently defined or resolved to permit the writing of detailed rules of procedure into the Constitution. We also do not believe that the details of rules of procedure belong in a constitutional document. We have, therefore, rejected the notion of spelling out these procedural rights in elaborate detail.

The principal effect of our proposal would be to enhance the status of procedural remedies which already exist, not to propose new ones. Individual rights to bring suits on environmental matters already exist under Chapter 116B of the Minnesota Statutes, the Environmental Rights Act of 1971, and under the class action provisions of the Rules of Civil Procedure. Our proposal will not abolish these remedies, but make them part of the constitutional protection available to citizens.

One of our reasons for choosing the language of the Illinois constitution is the experience which may be observed there. Since the section took effect on January 1, 1972, it is too soon to measure the problems and advantages experienced under the provision. By the time the Legislature meets to consider our recommendation, a full year of experience will have been observed. We recommend the Legislature examine this experience in considering the measure which we now propose.

III. TRUST FUND LANDS.

The issue.

Do present constitutional provisions relating to the management and disposition of trust fund lands adequately meet the requirements of modern Minnesota? In particular, are the constitutional provisions relating to the trust lands too restrictive?

The constitutional provisions.

The present provisions are contained in sections 4, 5, 6, and 7 of Article VIII, relating to the permanent school and permanent university funds, and in Article IV, section 32(b), relating to ther internal improvements trust fund lands.

History and administration of state trust lands.

When Congress authorized the people of the Territory of Minnesota to call a convention to frame a state constitution, it offered to grant to the proposed state a substantial amount of land. Two sections in each township were set aside for public school purposes. Ten more sections were set aside to finance the construction of public buildings.

The state constitution "accepted, ratified, and confirmed" these grants of land and the conditions attached to them. Article II, section 3, provides that these conditions "shall remain irrevocable without the consent of the United States."

The lands have been managed in a number of ways. Some have been sold and the proceeds invested. Other land has been exchanged, so that the state could more easily manage them. Some land is held as part of state forests. Other land is outside of state forests, but continues to be held as public lands.

The Trust Fund lands are not the only state lands. Trust Fund lands are those given by the Federal government at the time of statehood, or lands substituted for them. Over the years, the state has also acquired other lands, by purchase, condemnation, or tax forfeiture. Many of these lands are also managed by the Department of Natural Resources, but they are not subject to the restrictions imposed on the Trust Fund Lands. These other lands are not discussed in the Constitution. Their management is entirely within the discretion of the Department, as directed by the Legislature.

The management of the Trust Fund Lands is, however, dictated by the Constitution and by the federal Enabling Act, which authorized the drafting of the first state constitution. These documents place great restrictions on the administration of this land.

Turst Fund Lands may be sold only at public sales. Thus an auction determines the best price for land, whenever it is desired to sell them. In the past much farm land was sold and the proceeds invested for the use of schools or the University. Very little land is sold now.

Some Trust Fund land, particularly the mineral rights on such land, is leased. Again, leasing is by public bidding. The Department of Natural Resources has long placed stringent ecological restraints on the development of such mineral leases.

Other Trust Fund Land has been designated as part of the State Forests. These forest lands are subjected to scientific timber management policies, consistent with sound principles for

the protection of the environment. Timber on these lands is periodically cut and sold. The proceeds of the sales are used for reforestation and forest management. Any "profit" on the transaction is paid to the school funds.

While the State Forests are thus, in one sense, investments of the public in the natural resources of the state, they can also serve to provide other uses to the citizens. At most states, the State Forests can provide some recreational resources for the people of the state. They can provide "green space". Since the state committed itself, when accepting the lands, to use the proceeds for school purposes, the principal objective must be sound management for income, consistent with overriding public concerns. Thus Trust Fund lands in State Forests can never be "wilderness areas", since this would not provide the kind of support for schools required by the Trust undertaking. Nor can they be state parks, with developed and permanent recreational facilities.

Problems presented to the Committee.

The principal question relating to the use of Trust Fund Lands is whether these lands could be set aside for non-income producing purposes. The Trust Fund Lands must be managed for income, although ecological considerations are important in the minds of those responsible for their administration. A scientific or natural area is probably not income producing. Hence trust administrators would consider such use of trust fund lands a violation of their obligations.

A similar question arose several years ago, with respect to the transfer of trust fund lands to the federal government for the Voyageurs National Park. At that time, it was concluded that the only proper approach would be to condemn the land, pay for it, and invest the proceeds for school purposes. Thus the school trust fund was treated like any other trustee or owner of land and received compensation. The competing public use made a payment for the land which it took.

Indeed, even schools have been held unable to take school trust fund lands without paying for them. In 1914, the courts ruled that one school district, which wanted to use Trust Fund Land for a new school building, would have to institute a condemnation proceeding in the courts and pay the award made by a jury.*

Of course, the designation of lands as Trust Fund Lands does not totally remove them from other public use. Timber lands can be used as recreational areas during much of the growing life of the trees. They cannot, however, be developed as parks. Similarly the lands have value as nature areas, even if they cannot be preserved as unspoiled wilderness areas.

There are very good arguments for preserving and protecting wilderness areas, scientific areas, and parks. The Legislature can accomplish this by appropriating the necessary funds for the purchase of land. In proper circumstances it ought to do so. The stream of future finance for the schools, which the Trust Fund lands represent ought to be protected, too.

*In re Condemnation of Lands, 124 Minn. 271, 144 N.W. 960 (1914)

The Committee recommends that the trust fund provisions of Article VIII, relating to lands, be unaltered. We are advised that the Structure and Form Committee is proposing that Article IV, Section 32(b), be repealed and that lands in the Internal Improvements Fund be transferred to the permanent school fund. We concur in this recommendation. The trust provisions of Article VIII should provide adequate protection for the public.

The Minnesota Public Interest Research Group also presented a statement at our June 5th hearing, requesting amendment of sections 4 and 5. This amendment would require certain conditions on the sale or lease of trust fund lands. The Department of Natural Resources has long insisted on stringent conditions for ecological protection in the leases which it issues. Decisions to sell Trust Fund Lands are now infrequent. Both matters appear to us to be better suited for legislative action than for constitutional change if any further environmental protection is really needed. This is particularly true in light of our recommendations in Part II of this report.

Accordingly, the Committee recommends that the provisions of Article VIII, Sections 4, 5, 6 and 7, relating to Trust Fund Lands and their administration, be retained without amendment. Other portions of these sections, relating to the investment of cash funds, are within the purview of the Finance Committee; we make no recommendations with respect to them.

IV. OTHER PROVISIONS.

Two other Articles of the Constitution lie within our purview, these are Article XVII, Forest Fire Prevention, and Article XVIII, Forestation.

Article XVII, Forest Fire Prevention.

We received no testimony concerning this article. We believe that everyone agrees that forest fire prevention is desirable. The only question is whether this Article is necessary in order to accomplish the desired result.

In 1923, the Minnesota Supreme Court held that the building of fire breaks was an "internal improvement", which was prohibited by Article IX, Sections 5 and 10. This amendment was adopted in 1924 to make it clear that the state could engage in such works.

Since 1923, judicial interpretation of what is an "internal improvement" has changed considerably. Furthermore, we understand that the Finance Committee may make recommendations for the amendment of the sections involved, so that the Legislature could engage in works like this, without specific constitutional authorization. If this occurs, the authorization contained in the amendment would become surplus language and could safely be repealed.

The Article does, however, seem to authorize several matters which would not be encompassed by a mere repeal of the prohibition on internal improvements. It authorizes the contracting of state debt for this purpose. It thus adds to the Legislature's rather limited authority to contract state debt. See Article IX, Section 6, subdivision 2(b).

The article also authorizes for the assessment of benefits against the lands benefitted. It may thus authorize a form of improvement tax, not assessed on an ad valorem basis. Under Article IX, Section 1, this may be done only by municipalities.

The effect of this Article may also be to override some restrictions on the use of state trust fund lands. The Article may authorize the appropriation of benefit charges from the income of such lands. This is something which the Legislature could not do without specific amendment.

Section 1 of the Article thus appears to have continuing vitality. Section 2, however, seems to have served its purpose. It might be repealed as part of a general removal of obsolete language.

Accordingly, the Committee recommends no immediate change in Article XVII, Section 1. If there are adequate changes in Article IX, Article XVII might be substantially shortened or even eliminated. Article XVII, Section 2, may be removed as part of a repeal of obsolete language.

Article XVIII, Forestation.

Like its predecessor, Article XVIII was enacted to permit the state to engage in forestation projects. These would otherwise have been prohibited by the "internal improvements" language of Article IX, Section 10. This amendment also authorizes a special tax treatment for forest lands, thus perhaps creating an exception to the provisions of Article IX, Section 1.

We believe that both of these powers should be retained by the Legislature. If the language of Article IX remains as it is, the language of Article XVIII must be retained in order to accomplish this result. If the language of Article IX is altered, Article XVIII might be amended or totally removed from the Constitution, if it is clear that the Legislature retains the powers which are presently enumerated in it.

The Committee recommends no immediate change in Article XVIII, Section 1. The need for this Article should be reexamined if there are substantial changes in Article IX. Section 2 of this Article might be repealed as part of a general repeal of obsolete language.

V. SUMMARY OF RECOMMENDATIONS.

The Committee recommends the adoption of an Environmental Rights Amendment, patterned after the Illinois provision. A bill for the proposal of such an amendment is included as an appendix to this report.

The Committee has concluded that the present language relating to Trust Fund Lands is adequate and should be retained. We see no special need for amendment or change.

The Committee has decided that Articles XVII and XVIII, relating to Forest Fire Prevention and Forestation, do not require immediate change. If there is revision of the internal improvements provisions of the Finance Article, several provisions of Article XVII and XVIII may become redundant and could be repealed without impairing the power of the Legislature to act in these fields. We recommend reexamination of these Articles, if such amendments are proposed or adopted. Section 2 of each of these Articles has served its purpose and could be repealed as part of a general removal of obsolete language.

APPENDIX A

Witnesses who appeared at our hearings:

Peter Benzian, Minnesota Public Interest Research Group(MPIRG)
Edmund Bray, The Nature Conservancy
Howard Vogel, Minnesota Environmental Control Citizens Association (MECCA)

Statements Received:

Governor Wendell Anderson
C. B. Buckman, Deputy Commissioner of Department of Natural Resources
Mary Watson, League of Women Voters

Others specially invited to make statements:

Advisory Committee to the Commissioner of Natural Resources on Scientific & Natural Areas
Agricultural Stabilization Conservation Service
Air Pollution Control Association
American Fisheries Society
Association of Minnesota Counties
Association of Minnesota Division of Lands and Forestry
Clear Air, Clear Water, Unlimited
County Land Commissioners Committee
Department of Natural Resources
Richard J. Dorer
Friends of the Wilderness
Land Exchange Review Board
MECCA
Metro Clean Air Committee
Minnesota Association for Conservation Education
Minnesota Association for Conservation Education
Minnesota Conservation Federation
Minnesota Council of State Parks
Minnesota Environmental Control Citizen's Association
Minnesota Environmental Resources Council, Inc.
Minnesota Police and Peace Officer's Association
Minnesota Public Interest Research Group
Minnesota Recreation and Park Assoc., Inc.
Minnesota Tree Farm Committee
Minnesota Water Resources Board
National Wildlife Federation
The Nature Conservancy
North Central Forest Experiment Station

School of Forestry
Scientific and Natural Area Committee
Sierra Club
Soil Conservation Society
Southern Minnesota Conservation Association
State Soil and Water Conservation Commission
Timber Law Committee
Timber Producer's Association

Long Lake Conservation Center
Cedar Valley Conservation Club
Citizens for Integration of Highways and Environment
Save Lake Superior Association, Inc.
Wilderness Watch
Minnesota Environmental Defense Council
Minnesota Out of Doors
Committee on Urban Environment
Environmental Science Center
Minnesota Environmental Defense Council
Central Conservation Association
Environmental Protection Agency
Department of Agriculture(State)
Environmental Law Committee
Environmental Science Center
Soil Conservation Service
Environmental Sciences Foundation
Minnesota Environmental Control Association
State Soil and Water Conservation Committee
Minnesota Federation of Labor
Environmental Health Division
Environmental Planning
Department of Taxation(State)
W-168 Health Service
Upper Midwest Research
Southern Minnesota Conservation Association

Outdoor Writers:

Jim Peterson, Outdoor News
Hank Kehborn, St. Paul Pioneer Press
Ron Schara, Minneapolis Tribune
Joe Hennessy, Minneapolis Star
Bob Gologoski, St. Paul Dispatch
Rog Vessels, Sun Newspapers
United Northern Sportsmen
Upper Mississippi Valley Section, Soc.of Am.Foresters
Izaak Walton League
The Wildlife Society, St. Paul
The Wildlife Society, Fergus Falls

Research Papers Prepared:

Richard Holmstrom, "Trust Fund Lands"
Richard Holmstrom, "Environmental Bill of Rights"
Richard Holmstrom, "Supplement to the Report on an Environmental Bill of Rights"

APPENDIX B

A bill for an act

proposing an amendment to the Minnesota Constitution, by adding an article; providing for public policy and private rights relating to environment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. The following amendment to the Minnesota Constitution, adding a new Article XXII, is proposed to the people. If the amendment is adopted, the article shall read as follows:

Article XXII

Section 1. The public policy of the state and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The law shall provide for the implementation and enforcement of this public policy.

Sec. 2. Each person has a right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as may be provided by law.

Sec. 2. The proposed amendment shall be submitted to the people at the 1974 general election. The question proposed to the people shall be:

"Shall the Minnesota Constitution be amended to state public policy and private rights relating to environment?

Yes_____

No _____"

TRANSPORTATION COMMITTEE HEARING

February 3, 1972 10 AM
Room 15, State Capitol

Present: Senator Tennessen-Chairman, Mr. Evenson, Betty Rosas-Sec.

Senator Tennessen opened the hearing at 10 AM and explained the jurisdicton of the Committee. He stated the Committee will schedule further meetings both here and out-state, mentioning the notice was short in regard to this meeting and there would be an opportunity for those unable to attend today to testify later.

He stated the procedure for this Hearing will be to first call on those who had been in contact with our Office and then proceed to hear from any others wishing to testify.

Mr. Leonard Ramberg representing Minnesota State Autombile Association spoke in favor of the present Constitutional provisions, stating highway funds should be used solely for building and maintaining highways.

Mr. Verne Ingvalson representing Minnesota Farm Bureau Federation stated Article XVI should be retained in its present form. He emphasized it is important to have a modern efficient highway system and his organization is very concerned with transportation needs in rural Minnesota. He added he is not opposed to mass transit in the metro area or integration of all public transportation planning through a central department.

Mrs. Marlene Krona, Co-Chairman of the Transportation Committee of the Council of Metropolitan Area League of Women Voters stated the League's position is in favor of a mass transit system.

Mr. Bob O'Brien representing Operating Engineers Union Local 49, spoke in favor of establishing a Department of Transportation for planning and development of all modes of transportation but doesn't think a long-range plan is possible if there is an uncertainty of funds.

Mr. Albert Ross, President, Amalgamated Transit Unit, (no statement submitted) stated freeways are becoming obsolete already, traffic comes to a standstill. He feels people will not tolerate another freeway thru the core of the city. He stated the Legislature gave a mandate to the Metropolitan Council to come up with a transit system. He added there should be some changes in Article XVI.

Mr. Charles Dayton, Attorney and Legal Director of Minnesota Public Interest Research Group, (MPIRG) stated we are faced with a real crisis with almost exclusive reliance on the automobile, which is creating most of the pollution. He mentioned several alternatives: 1] Do nothing, 2]Amend the Constitution to place no restriction on highway user fund, 3]Eliminate dedicated funds used solely for highway purposes, designate for transportation and use also for mass transit or bicycles, 4]Eliminate formula and broaden use of fund for highway beautification, implementation of traffic controls, attempt to eliminate pollution,etc. He offered the services of MPIRG to the Commission.

Miss Connie Hinitz, MPIRG member, Sophomore at University of Minnesota, stated the concern of MPIRG at the U is bicycles, explaining Oregon designates 1% of its highway funds for a bicycle system.

Mr. Robert Thornburg, representing Minnesota Petroleum Council also presented a written statement to the Committee prepared by Hiway Users. He spoke in favor of the present system using the money exclusively for highway purposes.

Mr. John Hoene, Minnesota Asphalt Pavement Association spoke in favor of the present system.

Mr. Bill Peterson, representing the Coalition Opposing the Freeway, Pilot City Regional Center, TACTICS Board, (no written statement) stated there should be no dedicated funds for highways, health care or anything in Constitution as this is a legislative matter. He feels there should be a department of transportation created in the next legislative session. He suggested the Legislature weigh the benefits of the automobile against each other transit carrier and then weigh the effect of the automobile on the environment vs. PRT, vs. uniflo, vs. mini-bus, vs.dial-a-ride. He feels the automobile is too expensive for the State of Minnesota and taxpayers.

The Committee asked questions of each speaker. Following is a list of the basic questions asked each and the responses received:

1-Should we have dedicated highway funds?
Ramberg: Remain as is.
Ingvalson: Article XVI should be retained.
Krona: No dedication, left to legislative process.
Thornburg: Favors present system. Leave Article XVI unchanged.
Hoene: Favors present system.
Peterson: IN the last 8 yrs. there's been a 33% decrease in number of people coming into Mpls. thru corridors. A poll 3 weeks ago showed 9 out of 10 people in metro area want mass transit. To eliminate from Constitution does not mean it cannot be developed thru normal legislative process.
McNulty: Have fund dedicated to transportation related purposes.

2-Should highways be supported entirely by user taxes?
Ramberg: Personal view: As approach to this problem was a device and not necessarily sound.
Thornburg: Perhaps changed in future but it is a good sound idea now.

3-Should highway user funds be used for pollution problems relating to the automobile?
Krona: Personal view: Should be used for related problems.
Ross: Something has to be done in this area.
McNulty: To alleviate, but not study.

4-Should percentages be written into Constitution?
Ingvalson: The formula is very fair and benefits metro as well as rural. Was done by Legislature when done in 1956. Much research was done - good formula. No need to change in forseeable future.

5-Should routes be listed in Constitution?
Ramberg: Personal opinion: No.
Krona: Personal opinion: Do not care to see Constitution that specific.
Ross: Leave to legislature.
Hoene: If you don't have designated routes legislators and Chambers of Commerce would be fighting each other.

6-Should we have an Article in the Constitution on transportation?
Krona: Depends on how narrow. Should be total scope of transportation.
Hinitz: Legislative matter.

7-Are you in favor of a department of transportation?
Krona: In favor of mass transit system. Transportation fund available to local governments as they see needs.
Peterson: Yes.

This portion of the hearing was concluded at 12:30 P.M. and further testimony on this subject was heard at the full Commission Meeting at 2 P.M. which is included in the minutes for the Commission Meeting.

Robert J. Tennessen
Chairman

RJT/br

TRANSPORTATION COMMITTEE HEARING
DULUTH, MINNESOTA March 24, 1972

Present: Senator Robert Tennessen, Rep. L. J. Lee, Rep. Joseph Prifrel, Mr. Orville Evenson, Mrs. Betty Rosas, Sec.

Senator Tennessen explained the Committee is holding seven hearings around the state to get reflections from various communities concerning the whole area of transportation. The following persons presented testimony:

Mr. Lloyd Shannon, St. Louis County Commissioner, appeared and stated there is a lack of money for state secondary roads and that 90 million dollars is needed to bring roads up to standards. He submitted a map showing the all-weather roads. He favors the present system of dedicated funds.

Senator Ralph Doty, Duluth, appeared and suggested a compromise solution, 75% of the dedicated fund for highways and 25% for mass transit.

Mr. Carl Sivertson, St. Louis County Engineer, spoke in favor of the present dedicated highway fund stating it is a fair tax since users pay their own way.

Mr. Richard Wiman, Sierra Club, Duluth, would like money for mass transit but not sure where it would come from. He stated the present system is forcing people to drive.

Mr. Charles Nickerson, Supervisor of Grand Lake representing St. Louis County Township Officers Association, spoke in favor of continuing dedicated funds. Not for diversion of funds. Would like township roads provided for in Constitution.

Mrs. Dorothy Nelson, citizen, (no written statement) expressed many points in favor of mass transit. She stated many people cannot afford the luxury of individual transit, and urged that mass transit be low cost or free, viewed as a utility of the city.

Senator Chmielewski, Sturgeon Lake, favors present method of dedicated funds and is not for changing the formula. (No written statement)

The Committee recessed for lunch at 12:10 PM and reconvened at 1 PM for the afternoon hearing.

Mr. Dennis Johnson, Transportation Planner for the Duluth Branch of the State Highway Department, speaking as citizen, stated there is a need for both highways and mass transit but the problem is revenue. He suggested if the present fund is sufficient it could be divided. He favors Highway Department as part of a new department of transportation. (No written statement)

Mr. Edwin Hoff, St. Louis County Commissioner, spoke in favor of present dedicated funds for highways.

Mr. Howard Patrick, Two Harbors, member of Traffic Committee Studying Freeway, speaking as citizen, favors highway trust fund being allocated to individual communities to use as they see fit. (No written statement).

Mrs. Gwen Carlson, Citizen, spoke against dedicated funds in the Constitution; prefers to see state aids given to each city for use for its particular need. (No written statement)

Mr. Ken Paulson, Chairman, County Engineers Legislative Committee, County Engineer at Pine City, favors Article 16 as it now stands stressing it is the vehicle for building the system of highways Minnesota can loook to with pride. Submitted pictures as an exhibit.

Mr. Herbert Evers, Oil Dealers of Carlton County, was not called on during the morning session and was unable to attend in the afternoon but requested to go on record as opposing any diversion of highway tax funds to mass transportation or any other uses.

Senator Robert J. Tennessen, Chrmn.
Mr. Orville Evenson
Rep. L. J. Lee
Rep. Joseph Prifrel

MINUTES OF THE TRANSPORTATION COMMITTEE,

CONSTITUTIONAL STUDY COMMISSION

HELD IN MARSHALL, MINNESOTA, ON APRIL 7, 1972

Committee members present were:

Senator Robert J. Tennessen, Chairman

L. J. Lee

Mr. Orville Evenson

Members absent:

Joseph Prifrel

The following is a list of the people who testified and a summary of their testimony. Some written statements were submitted along with oral testimony and sometimes in lieu of oral testimony:

Glenn Olson, Marshall, Minnesota, Highway Construction Contractor, opposes any change in Article XVI. If the Highway Fund is undedicated, he does not believe industry will locate in rural Minnesota and does not believe the Highway Fund can support both highways and mass transit. Believes road building priorities should not be given to the Legislature, although he is currently dissatisfied with the highway's priorities. Does believe the Highway Committee of the Senate and House exerts a great deal of pressure on the Highway Department.

Mr. Lew Hudson, Worthington, Minnesota, Editor of the Worthington Globe, also member of the Highway 60 Action Committee; Written statements submitted; basically opposes any change in

Article XVI. Does not believe the Legislature would act wisely in reappropriating highway user taxes for highway purposes if the funds were undedicated. He also does not believe that the experience in doing this under Article XIX relative to aviation is an analagous situation. Believes people will move back to rural area if good roads are provided.

Lyal George, Jackson,Minnesota, Chamber of Commerce, basically opposed to any change in Article XVI and wants Highway 71 upgraded to provide a major North-South thoroughfare in Minnesota. Mr. George also submitted a letter from the Jackson Chamber of Commerce in support of his proposition.

Mr. James J. Wychor, Vice President of Worthington Industries, Inc., and Owner of radio station KWOA of Worthington opposed to any change in Article XVI and believes change would inhibit economic growth in rural America and believes that good roads will reverse the movement of people from rural to urban areas.

Mr. Norman Larson, Bigelow Township, Worthington, also a member of Crises in the Cornbelt Agricultural Committee, opposed to any change in Article XVI and believes that with the loss of railroads, highways are becoming even more important. Submitted a written statement.

Mr. Jim Archbold, Marshall, Minnesota, Household Goods Moving Industry,opposed to any change in Article XVI yet unsatisfied with the current road conditions. Currently, due to road restrictions, he cannot move some of his trucks into several towns during the Spring breakup season.

Mr. George Abrahamson, President Protem of the Marshall City Council and Chairman of the Highway Committee of the Marshall

Area Chamber of Commerce. He submitted a written statement opposing any change stressing the need for a municipal state aid street. Currently, Marshall has 40 miles of streets, six of which are state aid. Expansion of road needs are directly related to the loss of rail service.

Mr. Jim Miller, Cottonwood County Board of Commissioners, Windom Chamber of Commerce, Windom, Minnesota, Supports the completion of Highway 60 as a four-lane road and believes the railroads have foresaken rural Minnesota. Consequently, roads are essential to development of the rural areas. He believes that it is basically unfair to use dedicated funds for mass transit but does support change in the Article governing the taxation of railroads. He generally believes railroads are not very wisely taxed.

Harry Peterson, Madison, Minnesota; supports retention of Article 16; believes the people need decent roads.

Mr. Robert Cudd, Clara City, Minnesota, President of VSC, a wholesale distributing firm; has written off railroads and believes it naive to think that railroads will ever again be meeting the needs of rural Minnesota. Need roads to support the economic development of the area. Opposed to change in the Highway Dedicated Fund. A written statement was submitted by him.

Bob O'Brien, St. Paul, Minnesota, International Union of Operating Engineers, Local 49; wants other means of funding mass

transit worked out and believes the development of rural Minnesota needs highways. Supports planned community development and the participation of roads in that development. Submitted a written statement.

Mr. Jim Ayers, Marshall, Minnesota, Editor of the Marshall Messenger; He likes it in Rural Minnesota and believes that good roads will reverse migration from urban to rural Minnesota provided economic development occurs.

Written statements were submitted by various persons and groups, a summary of each follows:

Lyon County Board of Commissioners, Joseph Brewers, Chairman, and by the Lyon County Auditor, Mr. Weston D. Hendrickson; opposes any change in Article XVI.

The Lake Marshall Township Board of Supervisors, Lyon County Minnesota; oppose any change in Article XVI.

A letter from Mr. Lyndon Torstenson, President of Dawson Ecology Club for Conservation Action, Dawson Public Schools, Dawson, Minnesota, 56232; believes dedicated funds should be used for bicycle paths, mass transit and railroad maintenance.

The Lyon County Republican Committee opposes any change in Article XVI.

The Windom Chamber of Commerce opposes the use of dedicated highway funds for the purpose of a mass transit system.

MINUTES OF THE TRANSPORTATION COMMITTEE,

CONSTITUTIONAL STUDY COMMISSION

HELD IN ROCHESTER, MINNESOTA, CITY HALL, APRIL 21,1972

Following is a list of the witnesses and a brief summary of their testimony, sometimes accompanied by written statements.

Richard Spavin, 2114 9th Avenue N.E., Rochester, Rochester Chamber of Commerce and Director of Personnel, Rochester Methodist Hospital, and Past Chairman of the Transportation Committee of the Chamber of Commerce. He was assisted in his testimony by Kenneth S. Umbehocker, Rochester Chamber of Commerce. Opposes any change in Article 16 and believes any change would divert funds from Highway 8. Good roads are essential to the Rochester business community since it serves as a trade center for approximately 250,000 people in Southeastern Minnesota. Does not believe that the undedication of funds for highways will mean the Legislature will do as it has done under Article 19 which is reappropriation of all used taxes to airport construction. His basic fear is the loss of political power in the rural area. Railroad service has been reduced although two lines currently serve Rochester with daily freight service East and West. No North-South freight shipments exist.

Robert Pecore, Owatonna, Minnesota, Steele County Engineer. Wants Article 16 retained as is. Supports user tax for highways; believes dedicated funds permit planning and prevents use of the highway funds for other needs of the state. He asks why highway

funds should be undedicated without the undedication of all funds. No opinion as to whether all highway costs and street costs should be paid for by user taxes rather than local property taxes.

Elmer Morris, Goodhue, Minnesota, Goodhue County Engineer, speaking on behalf of the Goodhue County Board of Commissioners. Goodhue County began upgrading its county road system 15 years ago and has completed one third of it to date. The average life of a bituminous road is approximately 18 years. Supports continued dedication of funds.

Philip S. Duff Jr., Red Wing, Minnesota; Editor of the Republican Eagle. Revenues paid into the Highway Trust Fund are not sufficient for current road needs. He believes mass transit should be financed in another way and believes that Red Wing has solved its mass transit by levying local property tax to support a system to the amount of $7,500.00 per year. Also believes that Red Wings taxes are as high as Minneapolis and St. Paul and does believe that dedicated funds should be used for mass transit. He also believes roads are necessary for economic development of rural Minnesota.

Senator Roger Laufenberger, Lewiston, Minnesota. Opposes change in Article 16; does support the development of mass transit but not financed from a highway user fund. He pointed out that Winona has a subsidized K-bus system of transportation which provides mobility to many of the older and poor people in the town. These railroads have forgotten rural Minnesota.

E. F. Melody, 115 Fairview, Fairmont, Minnesota, representing the Chamber of Commerce and its Highway Committee. Basically opposes

any change in Article 16 because he believes roads are necessary for economic development of rural Minnesota and he submitted a resolution in support of maintaining Article 16 as it is.

Ray Warden, Truman, Minnesota, Martin County Commissioner, basically addresses himself to Interstate 90 and Highway #60 and a rerouting of the two to save money and a change in specifications for Highway Construction.

George Cavers, Fairmont, Minnesota, Martin County Commissioner. Opposes any change in Article 16 and believes rural Minnesota needs better roads. Railroads have reduced transportation to Fairmont and the trackage is in bad shape and cannot take heavy loads.

George Jones, 1132 Lucia Avenue, Fairmont, Minnesota, submitted a resolution of the Fairmont City Council and basically opposed any change in Article 16.

Robert Peringer, Operating Engineers Local #49, Business Agent, Rochester, Minnesota; opposes any change in Article 16 and submitted a written statement.

Mr. Paul Hedberg, Blue Earth, Minnesota, Owner of Radio Station in Southern Minnesota and member of I-90 Corporation. Wants Article 16 to remain as it is and does not believe mass transit is an answer anyway but that if it is, funds should come from the metro area. Basically cynical about the construction of highways and believes that urban Minnesota is trying to dupe rural Minnesota by now undedicating the Highway Fund after having some interstate highways within the metro area. He believes that the Federal funding for interstate highways must now go to rural Minnesota and believes

that undedication of funds will eliminate matching state funds, which are necessary to obtain federal funds. Acknowledges that forty per cent or more of the revenue is paid into the highway are generated in the metro area and approximately only that amount of those funds has been spent there for the last several years.

Mr. John Patten, Blue Earth, Minnesota, Mayor; opposes any change in Article 16 and believes that econonic development of rural Minnesota depends on good roads. He also believes that feeder roads around the Blue Earth area are necessary to enable people to get to work in Blue Earth.

Paul Beyer, Minnesota Lake, Minnesota, County Commissioner of Faribault County. Wants Article 16 retained as it is and believes that if any change is made in Article 16 the Local property taxes will be increased to provide revenues he believes would be diverted from the fund for other than road building purposes. He believes that some local streets and roads should be paid for by local property taxes rather than by used taxes.

Joe Dupont, Albert Lea, Minnesota, County Engineer, Freeborn County. Albert Lea is the intersection of I-90 and I-35. He gave a basic history of what he viewed as road building problems in Minnesota from about 1920 to date. He believes initially the roads were not constructed for the automobile or for winter driving and that it has been the attempt of the state since then to provide all-weather roads for the automobile and to increase the safety standards because of increased automobile speeds. He does not believe that any of these objectives have been met and that the undedication of funds will hinder their attainment. He also does not believe that any road building needs will ever be completed. Currently,

Freeborn County levies 25 mills for roads and bridges and 1 mill equals $30,000.00 in revenue. He also pointed out that Freeborn County has 625 miles of roads. Railroad service has also deteriorated in his area.

Representative Dick Lempke, Wabasha County and Rural Winona County. Opposes any change in Article 16.

Representative Vic Schultz, Goodhue, Minnesota. Opposes any change in Article 16 and believes that highway problems have increased substantially and that more funds are needed for the maintenance and construction of roads.

One telegram was submitted by Senator Mel Frederick opposing any change in Article 16.

One Statement submitted for which no one appeared by the Zumbrota Civic and Commerce Association, Zumbrota, Minnesota, basically opposing any change in dedicated funds.

MINUTES OF THE TRANSPORTATION COMMITTEE

OF THE CONSTITUTIONAL STUDY COMMISSION

HELD IN ST. CLOUD, MINNESOTA, APRIL 28, 1972

The following is a list of the witnesses and a summary of their testimony. Some written statements were submitted without oral testimony.

Ralph Stock, representing the City Council of Litchfield, Minnesota. Mr. Stock opposes any changes in Article 16 and believes the bulk of the federal highway funds have been spent in the metropolitan area and believes that Litchfield needs a four-lane road. He commented on rail service, indicating that passenger service had decreased. As a resource, he used Mr. Bob Peifer, a trucker from Litchfield.

Rep. Bernard Brinkman of Richmond, Minnesota. He concurred with the resolution submitted by the Litchfield City Council and opposes any change in Article 16. He also believes a gas tax may be necessary and could be obtained if the Legislature has more control over the Highway Department. He would support an Amendment to Article 16, which insures more control by the Legislature over the Highway Department, yet opposes any change in dedicated funds. He indicated that the St. Cloud area has been growing at a rate of 15% to 18% per year for the last few years.

Mr. Bruce Coddington, Litchfield Chamber of Commerce, Litchfield, Minnesota, a supermarket operator. Basically, he supports the City Council resolution. He wants a four-lane highway from Litchfield to Minneapolis and believes that a four-lane highway to the metropolitan area is essential to the continued growth of Litchfield.

Mr. William Radzwill, Attorney, Dassel, Minnesota. He opposes any change in Article 16, yet objects to the unresponsiveness of the Highway Department to the local needs. His specific testimony centered on controversy between Dassel and the Highway Department over the construction of Highway 15 through part of Dassel. Also he wanted a by-pass of Highway 12 around the town since the heavy traffic through the town is detrimental to its development and business. He indicated the difficulty of dealing with the Highway Department and the nonresponsiveness of the Department since they had contacted their Senator, Stanley W. Holmquist and their Representative, Adolph Kvam, who despite their pleas with the Highway Department were unable to obtain satisfactory results. He does support constitutional changes which will make the Highway Department responsive to the Legislature.

Mr. M. C. Johnson, Mayor of Cokato, Minnesota. He is worried about any diversion of the Highway Funds and the expansion of Highway 12. He indicated that Cokato has grown 27% in the past ten years. He also testified that he thought the metro area could spend its share of the highway trust fund any way it sees fit so long as the rural area gets its fair share of the funds.

Mr. L. P. Ahles, Stearns County Highway Engineer, St. Cloud, Minnesota. He believes the current number of state aid miles in Stearns County is sufficient although he admits the county would always like more. He submitted a resolution of the County Board relative to the trust fund. In questioning, he indicated that Stearns County levies $1,110,000.00 currently for road and bridge funds and that the County has been upgrading its roads.

Rep. Jack Kleinbaum, St. Cloud, Minnesota. He does not wish to see a change in the dedication of funds although he does wish to see the Legislature have more control over the use of those funds. He believes people need a better input into the Highway Department.

Mr. Don Volmuth, Chamber of Commerce, St. Cloud. Opposes the use of highway funds for mass transit and believes that mass transit is not a solution in St. Cloud. Currently, he doesn't ride the St. Cloud bus system which is privately owned, but subsidized.

Rep. Howard Smith, Crosby, Minnesota. Supports the continued dedication of Article 16 and believes that the experience of the past 16 years with Article 16 justifies its continuance. However, he is not sure whether the Legislature should have more control over the Highway Department.

Mr. Dave Wilson, Selling Agent for Greyhound Lines, St. Cloud, Minnesota (testifying as a private individual). Current bus service between St. Cloud and the Twin Cities provides eight round trips per day. The bus system ties into the Twin City International Airport and the Metropolitan Transit System Lines. It also ties into the St. Cloud Bus System. The bus company currently provides reduced rates for the handicapped, disabled veterans, clergy and such categories. The fare is $2.90 one way and $5.55 round trip, travel time approximately 1 1/2 hours. He believes the subsidy of the local bus company competes with his business and opposes that subsidy and would like to see the bus system replaced with the local cab service. He believes the ridership between St. Cloud and the Twin Cities includes 15-20 passengers per departure boarding in St. Cloud.

The committee recessed for lunch and reconvened at 1:20 p.m.

Mr. Ouris Pattison, Willmar, Minnesota, self-employed, also representing "Willmar Opportunities", which represents businesses in the area attempting to attract industry to rural Minnesota. Willmar is located on the Amtrak system and is a scheduled stop. During the winter he thought the greatest usage of the Amtrak train was for recreational purposes to the West such as Jackson Hole, Wyoming. Willmar uses the railroad freight system but last week the Railroad Express Agency discontinued service in the Willmar area. Also, the railroad dropped the "less than carload lot" (LCL) shipments to the Willmar area. As a result of the dropping of REA and LCL service, certain shipping costs increased approximately 50%; specifically, retail clothing shipped in large cartons. Some objection to the discontinuance of the service was made, but not nearly as strong as the objection to any change in highway trust funds.

Mr. Ray E. Pederson, Mayor of Willmar, Minnesota, believes the outstate Minnesota area needs increased highway funds and that the construction of new highways should now be concentrated into the rural areas. Believes that for each $1 billion spent for interstate construction, the private sector has spent $8 billion for gas stations, motels, etc. (This is the figure he obtained from Commissioner Lappegaard). He wants immediate construction of highways in the rural area. He believes the limitations on bonding provisions for construction of highways should be taken out of the Constitution.

Mr. Duane E. Rumney, Willmar, Minnesota, also representing Mr. Pat Pearce of the Southwest Highway Committee of Nelson Leasing Company of Willmar, Minnesota, a truck leasing concern. Opposes any change in the Highway Trust Fund.

Marvin Beach, Willmar Chamber of Commerce, Willmar, Minnesota, opposes the use of the Trust Fund for any purposes other than highways and he indicated that Willmar has lost population in its trade area and believes that users of mass transit should pay the total cost of mass transit. However, he does not believe road users should pay the total cost of the highway system.

Mr. Elroy Angus, County Engineer, Kandiyohi County, Willmar, Minnesota. Opposes diversion of the user trust fund and believes that additional highway construction is needed and pointed out the problems of milk trucks, school buses, and garbage trucks, which are overweight, especially in the spring, and cause problems during the breakup. 420 miles of the 620 miles of road in Kandiyohi County are within the County State Aid System. Currently, Kandiyohi levies 30 mills for roads and bridges which raises approximately $752,000.00.

Mr. Al Mueller, Chairman of the Highway 15 Action Committee, New Ulm, Minnesota; the Chamber of Commerce Transportation Committee, New Ulm, Minnesota. He is a lawyer and the brother of State Representative Augie Mueller, who is Chairman of the House Transportation Committee. Believes that improved roads will keep population in rural areas by stimulating economic development in rural Minnesota. During the past decade, New Ulm has experienced consistent growth; to continue the growth dedicated funds are needed to insure long range highway planning. He also read a statement from the Mayor of New Ulm opposing any change in Article 16. However, he has no objection to giving the Legislature more control over the Highway Department.

Mr. H. P. Suedback, Brown County Engineer, New Ulm, Minnesota. Believes good highways in rural Minnesota will benefit urban citizens as well as rural by permitting them to travel about the state more freely for recreation and other purposes.

Mr. Joe Gracyzak, Hillman, Minnesota, Morrison County, a private citizen. Believes county roads should be improved and believes there should be more county state aid roads and that currently, no one ought to have to drive on roads that are not graveled.

Mr. John McQuoid, Little Falls, Minnesota, Personnel Director with Larson Industries, Little Falls, Minnesota, but testifying as a private person. He doesn't want any change in Article 16 and believes that only the "professional" engineers and administrators of the Highway Department are able to make decisions about transportation policies in the State of Minnesota. He opposes any control by the Legislature and believes that the current system is just fine. A very doctrinaire witness with no facts to substantiate his testimony.

Mr. Douglas Henschell, Mayor of Milaca, Minnesota. Basically opposes any change in Article 16.

Statements were submitted by the following persons or groups who did not testify in person.

Milaca Chamber of Commerce submitted a statement basically opposing any change in Article 16.

Princeton Chamber of Commerce also submitted a letter opposing any change in Article 16.

Mayor Carl L. Wyczawski, Mayor of New Ulm, opposes any change in Article 16.

A resolution by Mr. E. S. Pierce, President of the Southwest Highway Association. Basically fears any undedication of the funds will result in diversion to other areas of transportation.

Next a letter submitted by Nelson Leasing, Inc., Willmar, Minnesota, a truck leasing concern. The letter indicates the company has experienced substantial damage to spring assembly because of poor roads.

The Kandiyohi Commissioners submitted a resolution opposing any change in Article 16, Article 19, and Section 32 of Article 4. Believes any change would hamper growth in rural Minnesota.

Representative Adloph Kvam submitted a telegram opposing any change in Article 16.

MINUTES

Transportation Committee
Constitutional Study Commission

Moorhead, Minnesota
Thursday, May 4, 1972

Members present were, Chairman, Sen. Robert J. Tennessen, Rep. L. J. Lee and Rep. Joseph Prifral.

Members absent were Orville Evenson.

The meeting began at 2:00 p.m. at the Ramada Inn in Moorhead, Minnesota. The following is a summary of the testimony presented at the meeting and also statements submitted without oral testimony:

Mr. Wendall A. Huber, President of Minnesota Good Roads, Inc. and County Engineer of Ottertail County. He opposed any change in Article 16 and does not believe there are sufficient funds to provide the roads currently needed. Specifically, he wanted to maintain the adjective "solely" before "for highway purposes." Ottertail County is currently levying the 25 mills for its Road and Bridge Fund, which is over the maximum permissible.

Robert A. Anderson, Rattle Lake, Minnesota, 56515, also Vice-president of Viking-Land U.S.A., Inc. (area promotional organization). His organization covers a sixteen county regional area promoting travel, industrial development and medical recruitment. Believes that tourism is a future source of great income to the area and wishes to have good roads to develop it. He also believes that advertising and highway signs are essential to directing tourists in the area. In addition to the maintenance of the dedicated fund he wishes to see the creation of the northwest expressway on the Minnesota side of the North Dakota border to compete with Interstate

29 on the west side of the border.

Rep. Willis Eken, Twin Valley, Minnesota, opposed any changes in the dedicated fund and pointed out the great problems which will be caused by the rail service withdrawal from Norman and Polk Counties. Ullan, Minnesota currently ships over 2,000,000 bushels of grain from its elevators. If it loses the railroad shipment will be by truck. Fertile, Minnesota ships 1.4 million bushels and will be in the same predicament. Additionally, both of these towns receive much in the way of bulk fertilizers and other materials shipped by rail.

Ted Cornelious, representing the Bemidji area Chamber of Commerce. Mr. Cornelious supports the continuation of the dedicated funds. He believes that it provides for long-range planning, essential to the development of highways. Also he believes that good roads will stimulate business in the area.

Mr. Leonard Dickenson, Bemidji, Minnesota. He supports the continuation of the current dedicated structure.

Mr. Ernest Tell, County Commissioner, Beltrami County, Bemidji, Minnesota. Mr. Tell essentially supported Article 16 as it is. However, he pointed out that the County-State aid roads in his county are in much worse condition then the State trunk highways yet he did not support a change in the apportionment of Article 16 among the highways. He found it questioning that he had no real objection to the legislature exercising more control over the highway department provided planning was not jeopardized. He did not see much difference in his role as a County Commissioner deciding where roads should be located and that of the legislature.

Sen. Kenneth Wolf, St. Louis Park, indicated that he had no desire to cut down funds for outstate Minnesota and supports more funds for the construction of roads in outstate Minnesota. He also pointed out that if the Metropolitan area could use its share as it sees fit it could provide for cheaper means of transportation than building roads.

Mr. J. E. Rustad, Douglas County Commissioner, Alexandria, Minnesota. The Douglas County State-aid roads are in terrible shape with the worst spring break-up in many years while the State trunk highways are in better condition. However, he opposes any changes in Article 16, even in the percentage distribution among the various funds.

Mr. Vernon Korzendorfer, Becker County Engineer, Detroit Lakes, Minnesota. He opposed any change in Article 16.

Mrs. Roger Sipson, 513 South 6th Street, Moorhead, Minnesota. She is currently working on air pollution control plans and is concerned about the use of the auto because of the pollution caused by it. She supports the use of highway dedicated funds for elimination of auto pollution. She also points out the need for more transportation in rural area for old people who are no longer able to drive.

Virgil H. Tonsfeldt, Clay County Commissioner, submitted a resolution of the County Board opposing any changes in Article 16. Also, he indicated the need for additional up-grading of rural roads.

Conrad L. Johnson, Mayor, Barnsville, Minnesota. He opposes any changes in Article 16. Submitted a resolution by the City Council adopted May 1. He also pointed out the additional need for rural roads because of the railroad curtailment of less than carload lot shipments.

Mr. Dave Veldi, Moorhead, Minnesota, testifying as a private citizen. He pointed out the problems of planning by the highway department, and the waste of funds. He pointed out the need for good transportation systems in all parts of the State and expressed the hope that the legislature could exercise more control over the highway department to insure better responsiveness and planning.

The following are statements submitted by various individuals and officials:

Flowing Township Board, Vernon Alec, Chairman, opposes any change in dedicated funds and does not believe highway funds should be used to support mass transit.

Several construction companies, Strom Construction Company, Moorhead, Moen Brothers, Inc., Moorhead, Landoeidel & Son, Inc., Glinden, Minnesota, Sellin Brothers, Inc., Halley, Minnesota, oppose any change in Article 16. They believe that the current highway user tax supports the highways and also believes that nine-ten roads have to be built.

Roseau County Board of Commissioners, the County Auditor, and the County Engineer. They pointed out that the high needs in Roseau County which has a low elevation and many bridges. It currently cannot meet the replacement requirements as many of its bridges are over 50 years old and are of timber construction. They also support the continued need for roads in rural areas.

The Becker County Board wishes to see Article 16 retained in the Constitution.

Humble Township, Chairman of the Board, Benton Rindahl, supports the retention of Article 16 and pointed out that when I-94 cut off many of the township roads Humble Township paid

between $6,500.00 and $7,000.00 to fix up the roads.

Mr. Elmer Hammerstad, Chairman of the Skree Town Board, Clay County opposed any change in Article 16.

Town Board members of Parke Township, Halley, Minnesota. They opposed any change in Article 16.

Morken Township Board, Clay County opposes any changes in Article 16.

Mayor of Halley, Minnesota, Burton W. Johnson, opposes any changes in Article 16.

Town Board of Georgetown, Minnesota, opposes any changes in Article 16.

Henry J. Gunderson, Clerk of Molaud Township, Clay County, indicating the Town Board opposes any change in Article 16.

Mr. Wallace Austin, Baker, Minnesota. Opposes any changes in Article 16. Believes the outstate area needs all the funds it can get.

Elkton Town Board opposes any change in Article 16.

County Board of Red Lake County, opposes any change in Article 16 and believes other funding should be found for public transportation systems.

Kittson County Board, opposes any change in Article 16.

Arlo Brown, Mayor of Dillworth, Minnesota, supports current provisions.

Oak Porte Township supports the continuation of dedicated funds.

Moorhead Township Board opposes any change in Article 16.

Beltrami County Board supports continuation of Article 16.

Thief River Falls Chamber of Commerce, Mr. Merle Smith, Executive Vice-president, opposes any change in Article 16.

Chatfield Commercial Club opposes any change in Article 16.

TRANSPORTATION COMMITTEE HEARING
Public Library, Minneapolis, Minn.
May 6, 1972 10-12 and 1-3 PM

Present: Senator Robert Tennessen, Chairman, Mr. Orville Evenson, Mrs. Betty Rosas, Sec.

The Chairman explained the purpose of this Committee holding hearings throughout the state and that this hearing would particularly deal with the transportation problems in the metropolitan area.

Congressman Donald Fraser stated he seriously questioned whether Article XVI with its detailed prescription for allocation of highway funds, belongs in the Constitution, that it seriously restricts our state's ability to respond to new transportation needs. He gave illustrations of more flexible authority in this area in other states as the trend. He stated the automobile cannot adequately solve the problems of transportation in our cities.

Representative Tom Berg, Minneapolis, distributed copies of a bill introduced in the last Legislature proposing an amendment to the Minnesota Constitution, Article XVI, Sec.5 and 9, permitting use of highway user tax distribution fund for pollution control and other transportation purposes. He urged total undedication of the highway user fund. An alternative would be to broaden use of the fund to cover all forms of transportation and pollution attributable to transportation.

Mr. Warren Ibele, Chairman of Advisory Committee on Transit, Metropolitan Transit Commission, recommended creation of a trust fund raised by state gasoline taxes and motor vehicle license fees, but dedicated to transportation, highways and public transportation, and distributed according to the transportation needs of the particular region.

Mr. Loren J. Simer, Mpls., presented resolutions from the Minneapolis Council of Community Councils and the Metro Freeway Moratorium Coalition urging that the highway user fund be broadened to include other transportation purposes. He stated that automobile users are not paying their way.

Dr. Rodney G. Loper, University District Improvement Assoc. cited the problems of homeowners particularly in the I-35W area in Richfield affected with freeway building. He urged that the highway user fund to broadened to include other transportation purposes particularly mass transit for urban areas and environmental relief from the present urban freeways.

Mrs. Connie Barry, Concerned Citizens of E. Bloomington, urged undedication of highway funds and supported Rep. Berg's bill.

Mr. Bob Patterson, Sierra Club, recommended total elimination of dedicated funds and use of portion of highway users tax fund for mass transit. He stated an increase in the gas tax and licensing fees would be expected.

Mr. Tom Albers,MECCA Youth Action Board, recommended changing the language in Article XVI to read "50% tax shall be paid into the highway user tax distribution fund" with the balance used to set up statewide transportation systems and a metropolitan transit system connecting core cities with the outlying suburban communities. The Youth Board felt a compromise is more realistic that totally abolishing the fund, relative to passage.

Mr. Mark Sullivan, Twin City Flying Cloud 7, Prior Lake, expressed concern that a department of transportation would eliminate the present department of aeronautics, likes present arrangement. Senator Tennessen explained the funds for aeronautics are not presently dedicated but appropriated by the Legislature.

Mr. Peter Benzian, Minnesota Public Interest Research Group, submitted statistics on the costs of highways including construction, pollution and other indirect costs. He strongly urged elimination of Article XVI from the Constitution.

TRANSPORTATION COMMITTEE HEARING
Constitutional Study Commission
Room 118 State Capitol
May 12, 1972
Present: Senator Robert Tennessen, Rep. Joseph Prifrel, Rep. L. J. Lee, Mike Sieben (researcher)

The Chairman called the meeting to order at 10:07 AM. Dr. John G. Olin, Chief, Technical Services Section, Division of Air Quality, Minnesota Pollution Control Agency, submitted statistics on the air and noise pollution impact of motor vehicles. He stated highway vehicles have a significant adverse environmental impact and must be controlled to meet state pollution standards. He stated if 10% of drivers would ride with others we would meet the pollution standards. He feels the Minnesota Highway Department should think in terms of transportation construction not simply highway construction.

Mr. Gary Silberstein of the Sierra Club (no written statement) gave oral support for legislation that would decrease the use of private passenger cars, and abolishment of dedicated highway funds. His group would be in favor of creation of a department of transportation but feels rural people have to be reassured their needs will be met. He favored separation of a transportation department from the highway department which could be accomplished thru the legislature.

Mr. Edward E. Slettom, Executive Director for the Minnesota Association of Cooperatives, stressed the need for good roads throughout Minnesota particularly for the agricultural production. He urged no change in Article XVI.

At the close of the morning's meeting Mr. Slettom also mentioned he is Chairman of the Minnesota Highway Users Conference and furnished the Committee with two publications: Roads for Minnesota and Diversion-Obstacle to Adequate Roads.

Mrs. Naomi Loper, representing League of Women Voters of Minneapolis, stated their Board of Directors adopted a resolution May 10, 1972 in support of broadening the state highway user fund so that urban areas might be able to use it for other transportation needs in addition to highways. She urged that the Highway User Fund either be removed from the Constitution altogether and made a legislative function, or be broadened so that mass transit may be funded and some of the environmental and social costs incurred because of freeway building be paid from the Fund.

Mr. Dean Lund, Executive Secretary of the League of Municipalities, stated more state funds should be made available for the construction and improvement of state highways, including

limited access expressways, and for the improvement of local streets. He suggested consideration be given to developing a formal mechanism through which local officials within each region or highway district could influence the allocation of highway funds to meet transportation needs within their area. To accomplish, the League supports a state bonding program for highway purposes and increasing the present highway user taxes contingent upon a thorough analysis of the present formula.

Mr. Ralph Keyes, Executive Secretary of the Association of Minnesota Counties, (no written statement) stated there is no formal policy of his organization. He is opposed to undedication of the highway funds but would not object to consideration of changing the percentages.

The Committee recessed at 12:15 PM to 1:30 PM.

Chairman Tennessen reconvened the hearing for the afternoon session. Marcia Townley of the Greater Metropolitan Federation urged the state legislature to take the necessary steps to eliminate the highway user distribution fund as presently provided for in the Constitution. She stressed it is imperative to develop a balanced transportation system to provide mobility for all citizens. The Federation recommends that Article XVI be changed to allow for monies collected to be spent for general transportation purposes, each area being allowed to spend its share of money at its own discretion for transportation purposes.

Mr. Abe Rosenthal, Executive Vice President of the Metropolitan Transfermens Association, Inc., (no written statement) spoke in opposition of any attempt to use dedicated highway user funds for any other purpose. He stated that dedicated funds are proper and there is no surplus to be reasonably diverted.

Mr. Bob Berman of the American Institute of Planners testified in favor of elimination of the stipulation that the highway user tax distribution fund be used solely for highway purposes, and that the revenues be used for all transportation purposes.

Mr. Herbert Noble, 809 Douglas Ave., Minneapolis (no written statement) stated that a metropolitan balanced transit system is definitely needed, but that it should pay its own way. The Metropolitan Council should have the legal authority to determine how transportation monies should be spent within the metropolitan area rather than the State Highway Department.

Mr. Frank Burke, Longfellow Residents and Property Owners Organization, Inc., read a prepared statement concerning the neighborhood opposition to freeways cutting into the city neighborhoods. He stated the tax revenues lost thru property taken by the freeways cannot ever be regained. The Organization supports amendment of Article XVI, Sec.5.

Mr. Leo Borkowski, Chairman of the Winona County Board of Commissioners, stated opposition to any changes in Article XVI that would infringe on the present dedication of highway user taxes now dedicated for highway purposes.

State Senator Roger Laufenburger thanked the Committee for allowing the Winona County Board to testify.

The hearing adjourned at 3 P.M.

The following presented written statements which have been made a part of the record of this meeting in their entirety but are summarized here:

Mr. George K. Isaacs, HELP (Highways Eliminate Lakes and Parks), favors removing dedication of highway tax revenue for highway use only.

Mr. Gary Rippentrop, Executive Vice President of Minnesota Automobile Dealers Association, supports retention of the dedicated highway funds as provided in Article XVI.

Mr. Jerry Challman, Coalition Opposing the Freeway, indicates the Coalition urges the removal of the dedicated funds from the Constitution with legislative establishment of a department of Transportation and support of mass transportation.

Mr. Dan Chartraw, Chairman I-35 Concerned Citizens Committee urged new approaches to transportation needs, and recommends elimination of the highway trust fund from the Constitution.

Senator Robert J. Tennessen, Chrmn.
Rep. L. J. Lee
Rep. Joseph Prifrel
Mr. Orville Evenson

TRANSPORTATION COMMITTEE HEARING
Meeting with Finance Committee
Room 118, State Capitol, St. Paul, Minn.
June 15, 1972 9 A.M.
Present: Chairman, Sen.Robert Tennessen, Rep. Prifrel, Rep. Lee, Mr. Orville Evenson, Rep. Lindstrom, Sen. Davies, Mr. Duane Scribner, Betty Rosas, Sec.

The Chairman called the meeting to order stating the two Committees will hear testimony on and discuss Article IV, Section 32(a), relative to the gross earnings tax on railroads. Chairman Tennessen read a letter received from Mr. Gordon Forbes, Counsel for Minnesota Railroads Association, stating in part: "I wish to advise that, so far as Minnesota Railroads Association is concerned, we can offer no testimony on Article IV, Section 32(a) in that the industry which we represent has not instructed us to take a position on that subject matter. The Commission's notice refers to railroads' "projected plans". We are aware of no railroad plans which involve the constitutional questions being studied by the Commission." He added that railroad representatives would not be testifying. Mr. Evenson stated, for the record, he was extremely disappointed the railroad representatives will not be present.

The Chairman called on Rep. Ernest Lindstrom who presented a history of the gross earnings tax on railroads since 1858 and cited there has been no increase since 1912. He pointed out disparities between railroads and some other corporations. He stated the issue is: "Should the rigid prohibition against the legislature altering either the form or rate of railroad taxes without a vote of the people be maintained?" He added that according to the St. Paul Dispatch of May 19th, the railroads do not oppose the elimination of Article IV, Section 32(a). He recommended that the Constitution be so changed, stating that what was to protect the public has become a tax haven for railroads.

Mr. Gordon Moe, Assessor, City of Minneapolis, quoted statistics from a report done by the Minneapolis Industrial Development Commission stating railroad land within the City of Minneapolis falls into two categories: 1) That taxed under gross earnings (1464 acres market value of 83,500,000) and 2) That under ad valorem taxation (267 acres, market value of $16,900,000) totaling approximately 4.4% of the total area of Minneapolis. He stated that the effect of collecting taxes on a gross earnings basis has a tendency to reduce pressure on the owner to develop this land to its highest and best use; whereas, taxation on an ad valorem basis does put some pressure on the owner to dispose of properties not being used and make the best use of the remaining parcels.

Mr. F. C. Marshall, Assistant Commissioner of Highways, appeared and stated that $174 million would be required in construction costs alone to bring all state highways up to nine-ton standards, with right-of-way acquisitions or improvements of local roads

additional. He pointed out that according to the Land Of Lakes Study showing prospective railroad abandonments by 1975, 35 municipalities would need 9 ton road improvements on State highways at an estimated cost of $22.7 million, and 14 municipalities would need 9 ton road improvements on county highways at an estimated cost of $3 million; from the period from 1975 to 1980, 38 municipalities would need 9 ton road improvements on state highways at an estimated cost of $50 million and 11 municipalities would need 9 ton road improvements on county highways at an estimated cost of $4 million. It would cost $79.7 million to provide unrestricted highway access to communities affected by railroad abandonments according to the Land Of Lakes study projection.

In reply to questions he stated the Department is bringing the system up to nine-ton standards at a rate of about 2% per year and that 55% are now nine-ton. He added there are not sufficient funds to bring all up to nine-ton and continually upgrade. Regarding the formula stipulated in the Constitution he commented that in cross checking, the 1956 study was found not to be too far off but added that the Deparment would not object to another study at this time. (No written statement from Mr. Marshall)

Mr. David Rademacher, Department of Economic Development, presented lists of communities with rail service but which do not have nine-ton road access, which would be affected if the railroad serving each was abandoned. He added that his Department works primarily with communities having grain elevators or industries along the rail lines.

Mr. Arthur Roemer, Commissioner of Taxation, stated his Department has completed the first phase of a study showing the amount of property tax and income tax which would be paid by railroads if they were taxed like other business corporations. The study estimated an income tax for all railroads of $2,947,000 using 1970 income and current tax rates -- total estimated amounted to $22,889,000. He stated the railroads paid $14,353,653 in gross earnings taxes in 1970. He urged removal of Section 32(a) of Article IV, allowing the Legislature to determine taxation on railroads the same as other persons and industries in Minnesota.

Mr. W. R. Salmi, Superintendent of Schools, Proctor, Minn. expressed concern with gross earnings tax on railroads because his school district will have 20% of its gross earnings aid deducted from its foundation aid this year and 30% next year. He recommended changing Article IV, Section 32(a), to permit some other form of tax.

This concluded the taking of testimony from witnesses appearing and the Committee on Transportation discussed the contents of the Committee Report and need for additional hearings. The Committee felt very strongly a need to hear the railroads' views concerning retention or deletion of Section 32(a) of Article IV and in view of the fact each railroad should have received two communications

from the Commission regarding this hearing, and further that all but two ignored the notices, that the power of subpoena should be used. A motion was made by Mr. Evenson that the railroads be subpoenaed to a hearing on June 29, at 9 A.M. The motion died for lack of a second. A motion was made by Rep. Prifrel that the Presidents of all railroads operating in Minnesota be notified of a hearing to be held on June 29, at 9 A.M. requesting the president or his duly authorized representative to appear and that a reply giving the name of the person qualified to speak for the company be received in the Commission Office by June 22, and failure to comply by June 22, would necessitate issuing of subpoenas. Rep. Lee seconded the motion. Motion carried with Mr. Evenson voting no. The Chairman will draft the letter, to be sent by certified mail.

Senator Tennessen stated he would work out an outline of the Committee Report and submit it to the members for their comments.

Meeting adjourned at 12:30 P.M.

TRANSPORTATION COMMITTEE HEARING
meeting with Finance Committee
Room B-9 Highway Building, St. Paul
June 29, 1972 9 A.M.
Present: Chairman, Sen. Robert Tennessen, Rep. Lee, Mr. Orville Evenson, Rep. Lindstrom, Sen. Davies, Mr. Duane Scribner, Mrs. Betty Rosas, Sec.

The Chairman called the meeting to order at 9:10 A.M. and explained that in order for the Transportation Committee to make recommendations concerning Article XVI it is necessary to consider railroad plans and abandonments. The following persons testified representing the major railroad companies operating in Minnesota.

Mr. Gordon Forbes, Attorney, Minnesota Railroads Association, stated his Association does not have a position on Article IV, Section 32a of the Constitution. He further stated the railroads pay approximately 15 million dollars in gross earnings taxes and and 1.7 million dollars in state and local taxes, and that the gross earnings paid equals the entire amount paid in Minnesota by commercial truckers. Further, that the railroads will not abandon communities with substantial shipping. He mentioned the Land O'Lakes maps have presented problems concerning railroad abandonments since they have falsely stated some abandonments. Responding to questions he said the railroads want to be taxed on an equal basis with other transportation industries, that the public is turning to airplans for transportation, that 92% of inner city travel is by car, that super highways have increased competition from trucking, and that industries are encouraged to build by railroads in order to promote shipping by rail.

Mr. Richard Freeman, Vice President, Chicago and Northwestern Railway Company, advised the Committees that four weeks ago an employee group bought all the assets of the Chicago Norwestern Railroad for a little over 4 million dollars, and that Commissioner Roemer uses the value of 1 billion dollars. He stated that being employee owned every dollar earned is put back into the railroad. He further added it costs about $2,000 per mile per year to maintain a branch line ($7,000 per mile per year is the break-even point), that railroads cannot compete with trucks on short hauls and that the railroad must abandon lines yielding less than $2,000 per mile per year. Petitions for abandonment have been filed for 309 miles of line in Minnesota and about 339 miles of line are left to be abandoned, leaving 11,000 miles of line in Minnesota. Replying to questions, Mr. Freeman said that some lines are run on an "as needed" basis; that the $7,000 operating cost per mile per year covers about 35 cars per mile; that his company prefers an ad valorem tax as used in other states, that the railroad pays taxes of 2.3% of gross revenues in the surrounding states and competitors pay less than 1% of gross revenues; that since it has not had taxable net income for 22 years it has not paid a Federal income tax since 1950.

Mr. W. R. Allen, Management Supervisor, Burlington Northern, stated his railroad has 31,000 miles of track in Minnesota and has applications to abandon 167.4 miles of track, with a few additional lines under study. He said lines are abandoned because the public has

deserted them, and that most of the abandonments mentioned in the Land O'Lakes maps aren't foreseen by Burlington Northern. He stated Burlington Northern employs 10,582 people, that its break-even point is $4,000 and last year the company gave 3-1/2¢ to stockholders and 5¢ to Minnesota. He advised that his railroad does not oppose revision of the Constitution, would appreciate equitable treatment with other industries, and that an ad valorem tax system would make the community more aware of the railroad's contribution in taxes.

Mr. Harold Hoelscher, Transportation Division, Land O'Lakes, Inc. appeared by invitation from the Chairman. He stated the maps drawn up on future abandonments was an inner-house study and the reason for controversy over it is that information has been taken out of context. The information was secured from major railroads operating in Minnesota, Iowa, Nebraska and Wisconsin, and projections were made to 1975 and 1980.

Mr. Curtiss E. Crippen, President, Chicago, Milwaukee, St. Paul and Pacific Railroad, stated his line has no five or twenty year plan, that branch lines are under study but there are no present plan for abandonment, that there have been no abandonments since 1965, and that his railroad is operating at a loss which is decreasing each year. It operates 1,328 miles of track in Minnesota. He neither urges retention or deletion of Sec.32a of Article IV without knowledge of alternative taxes.

Mr. Ray Smith, Assistant Vice President of Traffic, Soo Line Railroad Company, stated his compnay has not abandoned any branch lines in Minnesota since 1961. He added Soo Line has about 1,000 miles of track and 600 miles of branch line in Minnesota and that if a branch line is losing money the railroad seeks permission for abandonment. He stated that the revenue from a line is attributed to the original branch line, and that in Northern Minnesota grain cars have expanded tremendously whereas shipping of corn and soy beans in Southern Minnesota is mainly done by truck.

Mr. J. Frank O'Grady, Director of Taxes, Duluth, Missabe and Iron Range Railway Company, advised the DM&IR does not plan abandonment of any line or branch line in the period from this date through 1992. His railroad has 707 miles of mainline and 274 miles of branch line and abandonment will not take place unless the needs of the shippers cease. His line's position is in favor of retaining Section 32a since it has stood the test of time, its validity has been upheld by the Courts and the cost of administering it is less than 1%. He stated the company is profitable.

Mr. Phillip Stringer, Attorney, Chicago, Rock Island and Pacific Railway Company, stated the Rock Island operates more than 7,000 miles of railroad in 13 midwestern and southwestern states, and that they operated in 1971 with a deficit of $6,415,404 compared to $16,639,636 in 1970, and expect to improve further in 1972. They have received authority this year to abandon approximately 150 miles of branch line and have approximately the same mileage before the Interstate Commerce Commission awaiting decision. He stated the Company has 200 miles of track in Minnesota, 100 miles

of mainline track, and that an ad valorem tax is favored over a gross receipts tax. He responded to questions that his Company would be in favor of letting the State have first option on abandoned land.

Mr. David Boyer, Executive Vice President, Minneapolis Northfield and Southern Railway, stated the MN&S Ry.operates wholly within the State of Minnesota on 113 miles of trackage of which 77 miles is mainline, and has no plans for service reduction within 5 to 7 years. He further states his Company does not oppose deletion of Article IV, Section 32a, in favor of an ad valorem tax provided they are subject to the same tax laws as any other business in the State.

Mr. Thomas Fearnell, Comptroller and Treasurer, Duluth Winnipeg and Pacific Railway Company, advised his Line has 167 miles of track in Minnesota with no branch lines, that 90% of its traffic is outside Minnesota, and that there are no proposed abandonments for the next five years. He quoted figures from a report of the Minnesota Department of Taxation showing the estimate of a corporation income tax and an ad valorem tax on his Line totaling $473,922 compared with the figure of $469,702 paid as a gross earnings tax, a difference of $4000. He added if the ad valorem taxes had been estimated by the Taxation Department as his Company feels they should have been the combined amount of ad valorem taxes and income taxes would be less than the amount of the gross earnings paid. He advised that his Company does not oppose elimination of Article IV, Sec.32a and based on estimates made by the Department of Taxation, adjusted as they feel would correctly reflect value,at this time find it difficult to oppose the ad valorem income tax combination.

MINNESOTA CONSTITUTIONAL STUDY COMMISSION
G-19E Administration Building / St. Paul, Minnesota 55155
(612) 296-6683

The contents of this Report are preliminary only, not the final recommendation of the Commission. Therefore do not make any use of the Report without permission.

REPORT OF THE

TRANSPORTATION COMMITTEE

TO THE

CONSTITUTIONAL STUDY COMMISSION

ON

NOVEMBER 21-22, 1972

* * * * *

SENATOR ROBERT J. TENNESSEN, CHAIRMAN
MR. ORVILLE J. EVENSON
REPRESENTATIVE L. J. LEE
REPRESENTATIVE JOSEPH PRIFREL

* * * * *

Chairman: Elmer L. Andersen; *Senators:* Robert J. Brown, Jack Davies, Carl A. Jensen, Robert J. Tennessen, Stanley N. Thorup, Kenneth Wolfe; *Representatives:* Aubrey W. Dirlam, Richard W. Fitzsimons, O. J. Heinitz, L. J. Lee, Ernest A. Lindstrom, Joseph Prifrel; *Supreme Court Justice:* James C. Otis; *Citizen Members:* Carl A. Auerbach, Orville J. Evenson, Mrs. Betty Kane, Mrs. Diana Murphy, Karl F. Rolvaag, Duane C. Scribner, Mrs. Joyce Hughes Smith.

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I. INTRODUCTION

A state transportation policy must consider all available modes - highway, air, rail and water. In metropolitan areas various modes of transportation must be combined to achieve optimal mobility for people and commerce. Presently the State Constitution contains provisions on air travel (Article XIX); highways (Article XVI and IX); railroad taxation (Article IV) and local government incentive for rail construction (Article IX). No provisions refer directly to water or mass transit.

The first and most basic issue facing the committee was whether a constitution ought to be a general document outlining legislative authority or a detailed document specifying, among other matters, bond and interest limits and highway routes.

After reviewing each constitutional provision pertaining to transportation, the committee decided to study all aspects of transportation, except water, to determine whether the basis for the present policies are valid in today's society. Ten public hearings were held in St. Paul, Minneapolis, Duluth, Rochester, St. Cloud, Moorhead, and Marshall to obtain public testimony on our existing policy and related problems. During the course of the hearings, 119 persons testified in person and well over 100 additional organications and individuals submitted letters or written testimony. A substantial amount of independent research was also conducted. From both the research and testimony, the committee concluded Minnesota lacks a comprehensive transportation policy which balances all modes.

II. AERONAUTICS PROVISIONS (Article XIX)

A. Background

During World War II, the accelerating importance of air travel as a practical means of transportation resulted in increased pressure on state and local units of government to finance the construction and maintenance of airports in all parts of Minnesota. Before the war's end, it became the goal of every forward-looking municipality in the state to possess its own airport. The eager units of local government naturally looked to state government for assistance in financing such enterprises.

A potential obstacle to the State in financing the construction and maintenance of airports was the prohibition in Article IX, Sec.5 of the Minnesota Constitution against the state being "a party in carrying on works of internal improvement." Although there had not been a judicial determination that financing the construction or maintenance of airports was such a prohibited "internal improvement," supporters of state financing for airports were taking no chances. As a result, the 1943 Legislature proposed and, in 1944, the people overwhelmingly approved a constitutional amendment to specifically authorize state financing of airport construction and maintenance, notwithstanding the potential prohibition against such financing in Article IX, Sec.5.

B. Present Language

The 1944 amendment took the form of a new article to the Minnesota Constitution (Article XIX), with five sections:

Section 1 authorizes the State to construct, improve, maintain and operate airports and other air navigation facilities and to

assist local units of government in similar undertakings. Using the authority granted by this section, the Legislature has created a Department of Aeronautics, which has done a most effective job of carying out the constitutional mandate in the 28 years since the adoption of the Aeronautics Amendment.

Section 2 authorizes the Legislature to appropriate funds, incur debts, and issue and negotiate bonds to finance the activities authorized in Section 1. Section 2 also specifically exempts construction and maintenance of airports from the internal improvements prohibition of Article IX, Sec.5, and declares that the purposes authorized in the first section are "public purposes" as defined in Article IX, Sec.1, for which the credit of the State may be loaned or given.

Under this section, the Department of Aeronautics was also to fund its initial operations and major airport construction projects which could not be covered by available appropriations. The authorized bonds and certificates of indebtedness were then paid off by tax dollars raised through the authority granted in Sections 3 and 4. While bonds and certificates of indebtedness have not been used to finance airport construction and maintenance since the early 1960's, Aeronautics Commissioner Lawrence McCabe recommended to this committee that the authority to issue such bonds and certificates be retained to provide for future contingencies requiring long-term financing of airport construction.

Section 3 authorizes the imposition of a tax on airplane fuel.

It should be noted that the receipts from this tax are not constitutionally dedicated to any specific purpose and may be spent as the Legislature sees fit. Traditionally, however, the receipts

have been spent for the purposes authorized in Section 1 of the article.

Section 4 authorizes the imposition of a tax in lieu of a general personal property tax on aircraft using the State's airspace. It specifically authorizes the Legislature to tax aircraft owned by companies paying gross earnings taxes even though use of the aircraft contributes to the earnings taxed on such a basis. Finally, this section authorizes the Legislature to exempt from taxation aircraft owned by nonresidents of the State and used only transiently or temporarily.

Using the authority granted by this section, the Legislature has established two types of taxes on aircraft.

1. Aircraft registration tax. This tax is not paid by commercial air carriers, but is paid by all other aircraft owners in lieu of personal property taxes.

2. Airline flight property tax. This tax is assessed by the State Department of Taxation against commercial air carriers such as Northwest, United, North Central, etc., on the aircraft which they use in Minnesota. The tax is based on a variable formula established by the Legislature.

Again, it should be noted that the funds raised through the taxes authorized by this section are not dedicated constitutionally to any specific purpose. However, like the flight fuel tax, receipts from the aircraft registration and airline flight property taxes have been traditionally used only for the construction and maintenance of airports.

Section 5 is a general repeal of provisions in the Constitution which are inconsistent with the authorization granted by

Article XIX. The effect of this section is to establish the "supremacy" of the article over conflicting provisions mentioned above.

C. Committee Consideration and Recommendation

The committee is in general agreement with the drafters of Article XIX in their determination that the building and maintenance of airports merits the expenditure of state funds, notwithstanding the prohibition against "internal improvements" in Article IX, Sec.5. With the continuing emphasis on air transport as a method of moving people and goods, the committee believes that the strong role the State has taken in encouraging and financing airport construction should be continued.

The committee also believes that the taxes authorized in Article XIX on flight fuel and aircraft are appropriate and should be continued. The committee takes careful note of the fact that tax receipts authorized are not dedicated to a particular purpose and that their expenditure is left entirely to the judgment of the Legislature. In its judgment the Legislature has consistently expended these funds for the purposes authorized by Article XIX.

In general, the committee believes that the authorization of power in Article XIX has been used wisely to develop a system of local and regional airports in Minnesota of which our State may be justly proud. The present provision has worked well in the past and accordingly, the committee recommends no change in the aeronautics provisions of the Minnesota Constitution as detailed in Article XIX.

III. HIGHWAY PROVISIONS (Article XVI)

A. Background and Problems

Modern constitutions have abandoned the kind of detail found in highway provisions of the Minnesota Constitution in favor of the establishment of general guidelines which allow the legislature to establish policy. Only 20 states have constitutional provisions requiring all or a portion of moneys raised from vehicle registration and motor vehicle taxes to be used exclusively for highway purposes! Since 1945, nine states have adopted completely new constitutions.[2] Of these, only Michigan and Montana have retained dedicated funds. However, unlike Minnesota's provision limiting use of the funds "solely for highway purposes,"[3] Michigan provides that funds be "used exclusively for highway purposes as defined by law."[4] (Emphasis added.) Presumably "as defined by law" would permit use of such funds to pay for all costs of the auto.

The new Montana Constitution also grants greater flexibility to the legislature by undedicating receipts from motor vehicle registration fees and by including highway safety programs, driver education, and tourist promotion among the purposes for which gasoline taxes and gross vehicle weight fees may be used. The Montana provision also allows the legislature to undedicate the latter two taxes by a three-fifths vote of each house.[5] Both Michigan and Montana provisions are found in the finance articles of their constitutions and do not merit separate treatment. Clearly the trend is toward shorter, simplified documents giving the legislature greater flexibility in meeting changing demands.

Testimony and research indicated the following shortcomings of our current policies:

1. Inadequate mobility for the old and young who cannot drive an auto and the poor who cannot afford to own one. Immobility denies them access to jobs, recreation, and shopping alternatives.

2. Scattered development in the metropolitan areas, encouraged by heavy reliance on the auto without regard to existing facilities for water, schools, churches, and public services, which must then be duplicated in the new developments.

3. High environmental costs unmet by the use taxes--death, pollution, energy exhaustion, and loss of tax base in central cites.

4. Unbalanced emphasis on highways as a source of mobility in metropolitan areas caused by the current financial scheme.

5. Lack of meaningful local input in transportation decision-making.

6. Local property tax burdens for construction of local roads and bridges resulting from an apparent imbalance in the formula dividing state funds.

7. Unrealistic bonding and interest limitations.

8. Lack of consideration of comparable costs of rail and truck shipments. The committee decided to evaluate and analyze as best it could with its limited resources all of these factors in arriving at its recommendations.

All of the above problems and their potential solutions are affected by Article XVI.

B. History of Article XVI

The original 1857 Minnesota Constitution had no section or articles dealing with transportation as such. The amendments adopted in the late 1800's dealt primarily with railroads, and it wasn't until 1897 that Article IX, Sec.15 was passed, providing for a state road and bridge fund. In 1906 the so-called "good

roads amendment" to Article IX was passed. In 1910 that article was amended to permit the State to assume half the cost of road and bridge projects. In 1912 another amendment to Article IX provided for a one-mill tax for roads and bridges.

It wasn't until 1920, when the farmers "trunk highway amendment" (Article XVI) was passed that our Constitution had a separate article dealing with transportation. This laid out specific highway routes specifying starting and finishing points. Subsequent amendments of 1924 and 1928 established the gasoline tax and provided for its distribution. In 1931, as trucking became more prevalent, a gross earnings tax on motor vehicles was added to Article XVI.

In 1956 Article XVI was substantially changed. A detailed description of highway routes was deleted shortening the article a great deal.

C. Summary of Article XVI

A brief summary of Article XVI as amended in 1956 is necessary.

Section 1, Authority to the State: Allows the State to establish, locate, construct, reconstruct, improve and maintain public highways and assist political subdividions therein.

Section 2, Trunk highway system: Creates a state highway system with routes consistent with the 1920 form of the article. It provides legislative authority to add new routes to the trunk highway system. Trunk highway routes 1 through 70, established by the 1920 amendment and approved by the 1956 amendment, may be changed and relocated,

> But no such change or relocation shall be authorized which would cause a deviation from the starting points or terminal set forth in said route or set any deviation from the villages or cities named therein in which such routes are to pass.

Section 3, County state-aid highway system: Authorizes the Legislature to provide for the establishment of a system of county state-aid highways located, constructed, and maintained by the counties. This system may not exceed 30,000 miles unless increased by law.

Section 4, Municipal state-aid street system: Authorizes the Legislature to provide for the establishment of a system of municipal state-aid streets for cities, villages, and boroughs having a population of 5,000 or more. This system is established and maintained by these local units. It is limited to 1,200 miles unless increased by law. The 1969 Legislature increased the limit to 2,000 miles.

Section 5, Highway-user tax distribution fund: Provides that this fund is to be used solely for highway purposes as defined in Article XVI. Taxes authorized by Sections 9 and 10 shall be paid into this fund. After deduction of collection costs, the proceeds are allocated as follows: 62% to the trunk highway fund, 29% to the county-state aid highway fund, and 9% to the municipal state-aid fund. Section 5 also provided that after 1963 the Legislature might set aside 5% of the net proceeds to be apportioned as it sees fit, the balance of the fund to be transferred to the trunk highway fund, the county-state highway fund, and the municipal state-aid fund in accordance with the percentages stated in Section 5.

Section 6, Trunk highway fund: Limits this fund to purposes specified in Section 2 and to payment of principal and interest of any bonds issued by authority of Section 12 and any bonds issued for trunk highway purposes under construction prior to July 1, 1957.

Funds are also to be used for carrying on work undertaken and for the discharge of obligations payable out of or chargable to the

trunk highway fund or trunk highway sinking fund as established by the Constitution prior to July 1, 1957. All moneys in said fund on the effective date of Article XVI were transferred to the fund created by Article XVI.

Section 7, County-state-aid highway fund: Creates a county state-aid highway fund. In addition to its share of the highway user tax, this fund receives all money accrued from the income derived from investments in the internal improvement land fund. The fund is apportioned among the counties as provided by law, to be used for establishment and maintenance of county state-aid highways. Funds may also be used for establishment and maintenance of other county and township roads, including trunk highways and municipal state-aid streets.

Section 8, Municipal state-aid street fund: Creates a fund to be apportioned by law among cities having a population of more than 5,000. Funds apportioned to it are to be used in the establishment and maintenance of municipal state-aid streets and, with legislative authorization, may also be used for other miscellaneous streets, including trunk highways and county state-aid highways.

Section 9, Taxation of vehicles: Authorizes the Legislature to provide for the taxation of motor vehicles using public streets and highways "on a more onerous basis than other personal property." This tax is in lieu of other taxes thereon except wheelage taxes imposed by political subdivisions solely for highway purposes, and except that the Legislature may impose such tax upon motor vehicles of companies paying taxes on their gross earnings. It also permits the Legislature to exempt from taxation any motor vehicle owned by a non-resident of the state but properly licensed in another state and transiently using Minnesota highways.

Section 10, Taxation of motor fuel: Provides that the State may tax any substance, or the business of selling or producing any substance, used in producing or generating power for propelling motor or other vehicles used on public highways. The proceeds of the tax are to be paid into the highway user distribution fund.

Section 11, Participation of political subdivisions in trunk highway work: Empowers the Legislature to authorize any political subdivision to aid in the establishment or improvement of trunk highways.

Section 12, Bonds: Authorizes the Legislature to provide for the issuance and sale of bonds to carry out the provisions of Section 2, not to exceed a par value of $150,000,000. Proceeds shall be paid into the trunk highway fund. Such bonds must mature within 20 years and shall be sold for not less than par and accrued interest shall not exceed 5% per annum. If the trunk highway fund is not sufficient to meet payment on these bonds, the Legislature may provide for the taxation of all taxable property in an amount to meet the deficiency, or it may appropriate from the general fund.

Section 13, Supersedure: Repeals prior inconsistent provisions.

D. Highway Funding in Minnesota

1. General Review of Funding

Two basic taxes provide the highway fund revenues--the motor vehicle license tax and the motor fuel taxes. In 1970 before deduction of collection costs, the motor vehicle license tax generated $63,824,123 and the gas tax $124,578,110, totalling $188,402,233. Funds for each of the road categories are proportioned according to law. Municipal state-aid street funds are apportioned on two factors. First, 50% of available funds is distributed on the basis of the ratio that each municipality's money needs bear to the total money needs of all eligible municipalities in the state. The remaining

50% is distributed on the basis of the percentage that each urban municipality's population bears to the total population of all urban municipalities. "Urban" in this context refers to those communities having a population in excess of 5,000.[7]

County state-aid highway funds are apportioned to the 87 counties on the basis of several factors. An initial 10% of the total available funds is divided equally among all the counties. An additional 10% of available funds is distributed on the ratio between motor vehicle registrations of a particular county and the state-wide total. Another 30% of available funds is distributed to individual counties according to the ratio that its total miles of approved county state-aid highways bear to the total miles of approved county state-aid highways. The final factor, affecting 50% of available county aid funds, is apportioned among the counties so that each county receives that proportion of funds which its needs bear to the total needs of all counties.[8]

State trunk highway funds are allocated and spent by the State Highway Department.[9]

The committee studied demographic changes which have occurred since the 1954 apportionment study and the adoption of Article XVI. The committee feels the need for a thorough restudy of the highway needs and of the funds necessary to provide an integrated highway system. Such a study should be undertaken even if Article XVI is repealed.

Testimony by the League of Minnesota Municipalities illustrated some of the reasons for our recommendations. In 1957, 58 communities with over 5,000 population qualified for state-aid street funds. Today, 89 qualify. In 1950 those communities constituted 42% of the state total population, today they constitute 59%. In 1958

revenues totaled $83,866,545 (after collection costs were deducted); the state trunk highway system received $52 million, $24 million went to the county state-aid system and $7.5 million to the municipal state-aid street fund. Respective amounts in 1970 were approximately $105 million, $49 million and $15 million. More local communities now share in the same percentage of funds, a factor not true of state and county.[10]

Mileage limitations may be obsolete. Presently only 2,000 miles of municipal state-aid streets are eligible for aid, an increase from 1,200 in 1957.[11] Since the number of eligible communities has increased 66% and their population has increased to 59% from 42% of the state total population[12], a study seems warranted.

Several county engineers testified that state-aid funds are insufficient to maintain their present systems. These witnesses also stated that, in comparison, the state trunk highway systems in their counties were in excellent condition.

Any inquiry into the validity of the present constitutional distribution formula should also consider whether the three basic classifications are valid or whether additional categories might be added.

Bonding and interest limitations have been restrictive at times. Testimony indicated that, in recent years, the 5% interest limit has made it very difficult to sell highway bonds. Since this has occurred during periods of high inflation, it may have represented a sound check on government spending. However, said checks are better left to the Legislature. Since 1957, three factors have changed which call for re-evaluation of the bonding limitation of $150 million. Those factors are the general increase in property values, a rise in personal income both individually and in the

aggregate, and the great increase in population. The Legislature ought to have authority to establish bonding limits and should determine whether the current limitation needs change.

2. The Metropolitan Share in Highway Revenues and Expenditures*

There is a great deal of interest in the share each city, county or region has in both the taxes collected for the statewide highway program, and the disbursements made. Following is a summary of the share received by the Twin Cities metropolitan area, based upon the "Inventory of Transportation Expenditures in the Metropolitan Area," done by the Transportation Planning Program and the Metropolitan Council.

Table 1 through 4 present, respectively, the statewide and metro area totals for highway revenues at all levels of government, and the statewide and metropolitan area total for highway expenditures. Data are presented for fiscal years 1959 through 1970. (See Appendix A for a description of the fiscal years of each level of government and how they are combined.) The detailed notes which follow the tables state the further breakdowns which are available, e.g., all Minnesota counties or all cities.

Several general points can be made concerning Tables 1 through 4 which point out the economic rather than accounting orientation of the analysis:

1. Borrowing is not included as a revenue since it would be double counting to include both the proceeds from a bond and the taxes raised to pay off the bond. Transfers from other funds, which are considered to be borrowing, and transfers from other levels of government are also not included in revenues to avoid double counting.

* We wish to acknowledge the research and analysis presented by the staff of the Metropolitan Council.

2. No revenue data is available by county for cities and villages. Therefore municipal expenditures are used as a proxy. One example of the problems faced in obtaining revenue figures is that the Minneapolis Department of Public Works uses over a dozen accounts to keep track of its street and street-related programs, with transfers back and forth between the accounts. MSAS allotments are known, so they are subtracted from the revenue proxy to give a residual. The residual can be considered to be property tax revenue; it is financed by general fund revenues, special assessments, and borrowings which are paid off with property tax.

3. Municipal figures include expenditures on such street-related projects as sidewalks, curbs, gutters, and lighting. However a rough estimate for Minneapolis shows these street-related expenditures account for only 13% of the total street expenditures.

4. The expenditure figures are on a "work done" basis, where the expenditure is recorded for the unit which did the work rather than the unit where, in the case of a transfer, the revenue originated.

a. The Metropolitan Area Share of State Highway Program - Table 6

Sums for 1965-69 are used because the nature of highway projects, which require several years for planning and construction, is such that data for a single year can be misleading. Table 5 shows that the metropolitan area in 65-69 paid in an estimated 41% of the highway user taxes, and received 13% of the CSAH grants, 66% of the MSAS grants, and 48% of the trunk highway maintenance and construction expenditures. This latter figure includes federally financed interstate highways. Between 1967 and 1970, the fraction the interstate

program is of the total state highway program, and the metropolitan share of the total state highway program, both have been falling.

Figure 1 shows graphically the metropolitan share of the State Highway program for 1965-70. Comparison with the metropolitan share of population, autos, motor vehicles, etc., show that there is no clear pattern of discrimination in favor of or against the metro area. But the question of what is the proper allocation of state-controlled funds is quite complex. Maintenance funds are spent where there are existing facilities depending upon degree of use, weather conditions, etc. Construction funds are allocated depending upon long range plans based upon travel forecasts, new development, congestion, etc. Comparisons using total highway outlays per capita, or per mile of existing roadway are too simple and each state program should be separately evaluated with respect to its goals.

The metropolitan share of 1965-1970 state user taxes (which finance the CSAH, MSAS, and part of the TH programs) is shown in figure 1 as 41%. This estimate uses (i) the metropolitan share of motor vehicle registrations as the metropolitan share of the MV registration tax, and (ii) an estimate of the metropolitan share of vehicle miles traveled as the metropolitan share of the gas tax. An alternative estimate using only motor vehicle registrations would give a metropopolitan share of state user taxes of 45%.

b. Relative Importance of Revenues and Expenditures. Table 6 shows how important each type of revenue or expenditure is to each level of government, for the metropolitan area as well as the non-metropolitan area. CHAH funds make up 57.2% of highway revenues for non-metropolitan counties, but only 28.4% or revenues for metropolitan counties.

On the expenditure side, at each level of government, the metropolitan area has a higher percentage of its revenues going for construction. This can be related to the fact that almost 90% of Minnesota's 1960-70 population growth occurred in the seven-county metropolitan area.

c.Highway and Street Mileage - The statewide and metropolitan area totals for each highway system is given in Table 7. Unfortunately there is no corresponding data available on relative use.

FIGURE 1

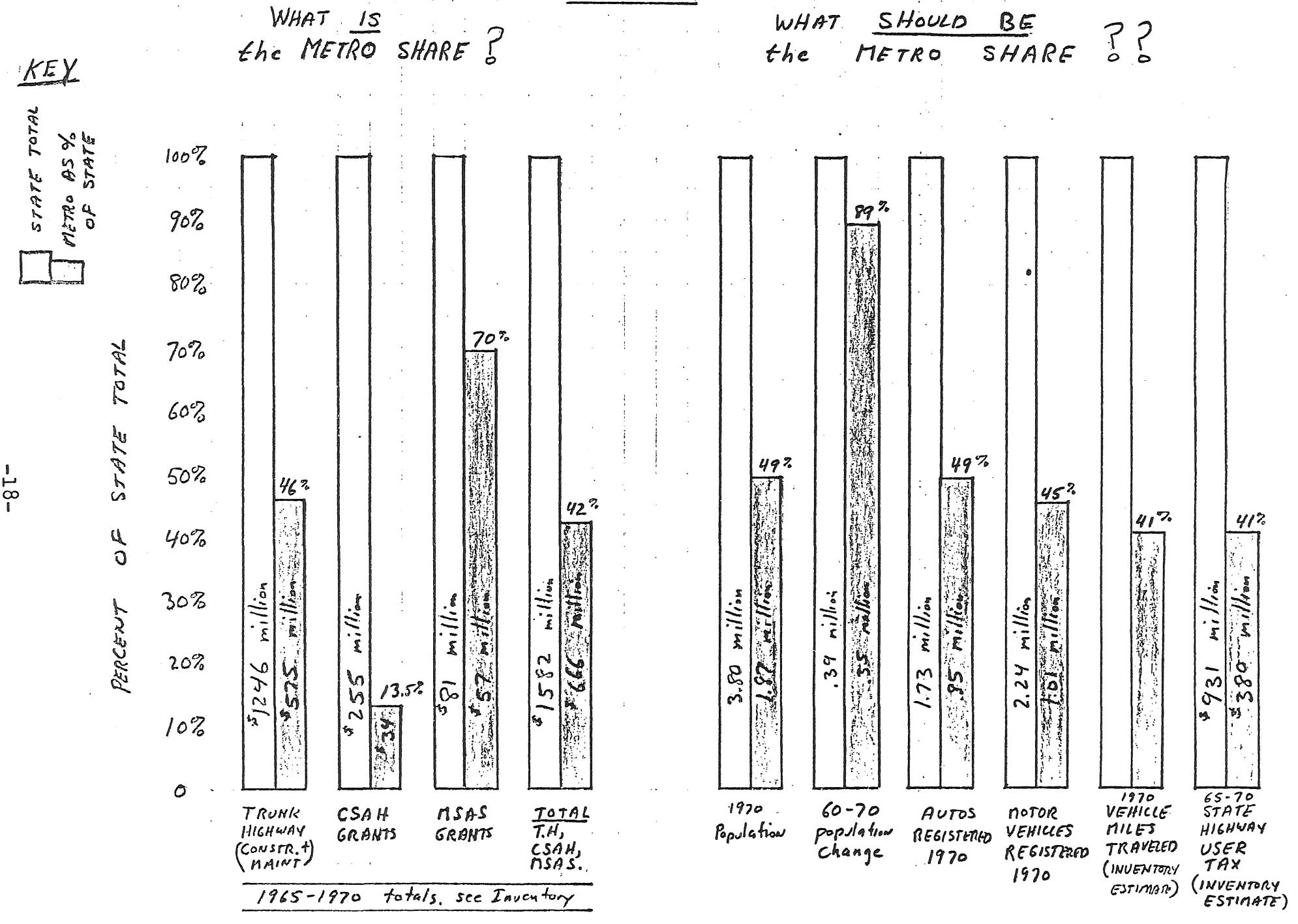

WHAT IS the METRO SHARE?
WHAT SHOULD BE the METRO SHARE??
KEY
STATE TOTAL
METRO AS % OF STATE
PERCENT OF STATE TOTAL
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0
$1246 million
$525 million
46%
$255 million
$34 million
13.5%
$81 million
$57 million
70%
$1582 million
$666 million
42%
TRUNK HIGHWAY (CONSTR.+ MAINT)
CSAH GRANTS
MSAS GRANTS
TOTAL T.H, CSAH, MSAS.
1965-1970 totals. see Inventory
3.80 million
1.87 million
49%
1970 Population
.39 million
.35 million
89%
60-70 population Change
1.73 million
.85 million
49%
AUTOS REGISTERED 1970
2.24 million
1.01 million
45%
MOTOR VEHICLES REGISTERED 1970
41%
1970 VEHICLE MILES TRAVELED (INVENTORY ESTIMATE)
$931 million
$380 million
41%
65-70 STATE HIGHWAY USER TAX (INVENTORY ESTIMATE)

TABLE 1: MINNESOTA HIGHWAY, STREET, AND STREET-RELATED REVENUES BY LEVEL OF GOVERNMENT
(in thousands of dollars)

A)	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	19
ighway)(a)											
	49,874	57,191	59,861	53,867	59,961	78,251	98,141	99,186	92,701	113,692	90,
er	55,863	58,637	60,565	61,633	63,937	73,940	76,549	82,845	86,616	100,657	106,
nse	977	2,098	1,717	1,507	1,584	2,125	1,899	1,893	1,920	2,339	2,
	907	512	562	582	635	591	599	669	628	774	
	2,808	3,337	3,239	3,818	3,158	5,447	6,286	6,755	6,429	9,329	10,
	110,429	121,775	125,944	121,407	129,275	160,354	183,474	191,338	188,294	226,791	209,
Agency Funds)(b)	8,696	8,049	6,908	5,331	4,222	5,783	5,794	4,248	6,227	6,032	5,
t Fed. Ag. Funds)(c)											
c. Funds	416	284	385	236	173	185	498	448	547	222	
er (CSAH)	24,310	26,654	28,567	28,284	29,551	33,503	33,923	38,035	38,224	44,644	49,
& St. Repl.	25,488	26,680	29,957	32,052	33,330	32,876	34,176	35,173	38,287	41,242	43,
	556	235	219	293	362	336	290	1,131	767	717	2,
	50,770	53,853	59,128	60,865	63,416	66,900	68,887	74,787	77,825	86,825	95,
c. Funds	--	--	--	--	--	--	229	162	--	12	
& St. Repl.	9,715	10,933	9,829	10,175	10,372	9,801	10,504	9,821	--	10,745	11,
g. Taxes	132	246	19	100	62	93	468	451	--	951	
									(est)		
	9,847	11,179	9,848	10,275	10,434	9,894	11,201	10,434	11,071	11,708	13,
LAGES (e)											
er (MSAS)	8,108	8,371	9,186	9,038	9,451	10,967	11,370	11,662	12,443	14,268	15,
operty Tax)	36,154	40,269	42,269	46,964	40,358	39,665	43,640	51,597	63,058	59,404	74,
	44,262	48,640	51,774	56,002	49,809	50,632	55,010	63,259	75,501	73,672	89,
	224,004	243,496	253,602	253,880	257,156	293,563	324,366	344,066	358,918	405,028	412,
TAL (f)	88,281	93,662	98,318	98,995	102,939	118,410	121,842	132,542	137,283	159,569	170,
ables)											

TABLE 2: SELECTED HIGHWAY, STREET, AND STREET-RELATED REVENUES ORIGINATING IN METRO AREA
(in thousands of dollars)

A)	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1
R TAX (g)											
way Portion)							30,620	33,387	34,906	41,068	44
c. Funds		12					40	58	7	--	
er (CSAH)		3,477					4,213	5,780	4,257	5,358	6
& St. Repl.		5,997					11,358	11,540	12,977	14,546	14
		4					13	410	315	211	
		9,490					15,624	17,788	17,556	20,115	21
c. Funds							10	9			
& St. Repl.		732					690	722		703	
g. Taxes		46					38	37		35	
									'est)		
		778					738	768	778	738	
LLAGES (j)											
er (MSAS)		6,752					6,728	8,260	8,257	9,782	9
		19,591					23,916	27,796	37,379	31,098	43
		26,343					30,644	36,056	45,636	40,880	53

TABLE 3: MINNESOTA HIGHWAY, STREET, AND STREET-RELATED EXPENDITURES BY LEVEL OF GOVERNMENT
(In thousands of dollars)

	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969
		84,825					134,873	141,164	148,527	186,468	171,73
		15,665					23,789	25,735	31,855	29,365	34,03
		13,797					16,441	17,769	16,798	18,005	17,02
		114,287					175,103	184,668	197,180	233,838	222,78
	23,196	25,829	27,792	30,888	32,842	35,933	32,884	41,832	38,390	47,235	55,42
	23,694	27,365	26,639	28,789	27,988	27,981	32,991	34,837	37,260	31,529	43,49
	194	279	166	284	295	142	113	1,184	1,762	838	84
	47,084	53,473	54,597	59,961	61,125	64,056	65,988	77,853	77,412	79,602	99,76
	2,285	2,527	2,017	1,699	1,840	1,796	1,486	1,690		1,889	2,49
	6,431	7,567	7,483	8,579	7,698	7,420	10,142	8,854		9,027	10,46
	8,716	10,094	9,500	10,278	9,538	9,216	11,628	10,544	(est) 10,730	10,916	12,95
GES (o)											
	25,003	27,351	29,439	31,058	25,905	25,678	26,802	36,908	45,567	43,875	52,83
	19,261	21,292	22,336	24,944	23,905	24,962	28,208	26,349	29,934	29,796	37,14
	44,264	48,643	51,775	56,002	49,810	50,640	55,010	63,257	75,501	73,671	89,97
		140,532					196,045	221,594	234,274	279,467	282,48
		71,889					95,130	95,775	107,989	99,717	125,13
		14,076					16,554	18,953	18,560	18,843	17,86
		226,497					307,729	336,322	360,823	398,027	425,48

TABLE 4: HIGHWAY, STREET, AND STREET-RELATED EXPENDITURES IN METRO AREA
(in thousands of dollars)

	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969
		40,670					70,681	75,582	83,550	92,769	81,17
		3,695					5,944	6,183	9,333	8,145	10,83
		6,087					7,938	8,707	8,647	8,416	7,61
		50,452					84,563	90,472	101,530	109,330	99,62
		4,322					6,991	11,938	8,442	11,001	12,52
		3,914					5,049	6,143	7,305	6,090	9,42
		18					1	860	1,535	308	29
		8,254					12,040	18,941	17,282	17,399	22,24
		301					286	310		257	22
		477					633	593		513	55
		778					919	903	(est) 820	770	78
GES (s)											
		16,644					16,775	23,487	30,403	25,623	34,46
		10,932					14,969	13,271	16,039	15,433	19,34
		27,576					31,744	36,758	46,442	41,056	53,80
		61,938					94,733	111,353	122,673	129,650	128,39
		19,017					26,595	26,190	33,219	30,181	40,15
		6,015					7,939	9,567	10,182	8,724	7,90
		87,059					129,267	147,074	166,075	168,075	176,45

TABLE 5: METRO AREA HIGHWAY, STREET, AND STREET-RELATED REVENUES AND EXPENDITURES AS A PERCENTAGE OF STATEWIDE TOTALS

ENUES - 1965-69 SUMS		EXPENDITURES - 1965-69 SUMS
TE		STATE
Highway User Tax	40.9%	Construction
		Maintenance
UNTY		
Federal Misc. Funds	5.1%	Subtotal
CSAH grants	13.0%	
Property Tax & St. Replace.	33.9%	COUNTY
		Capital
Subtotal	23.0%	Current
WNSHIP - Subtotal	6.7%	Subtotal
TIES & VILLAGES		TOWNSHIP
MSAS grants	65.8%	Capital
Residual Property Tax)	56.0%	Current
Subtotal	57.8%	Subtotal
		CITIES & VILIAGES
		Capital
		Current
		Subtotal
URCE:		
ENUES: Figures in Table 2 as a percent of corresponding figures in Table 1.		ALL LEVELS
ITURES: Table 4 figures as a percent of Table 3 figures.		Capital
		Current
		Other
		Total

TABLE 6: RELATIVE IMPORTANCE OF HIGHWAY, STREET, AND STREET-RELATED REVENUES AND EXPENDITURES

A COMPARISON OF METRO AREA WITH STATE TOTALS

ES - 1965-69 SUMS	State	Metro	Non-Metro
ral Aid	49.5%		
way User	45.2%		
rs License	1.0%		
l Fines	.3%		
	3.8%		
btotal	100.0%		
ral Misc. Funds	.6%	.1%	.7%
way User (CSAH)	50.5%	28.4%	57.2%
rty Tax	47.7%	70.3%	40.9%
	1.2%	1.1%	1.2%
btotal	100.0%	100.0%	100.0%
HIP			
ral Misc. Funds	1.5%	.1%	1.6%
rty Tax	92.7%	94.6%	92.4%
r & Cig. Taxes	5.8%	4.8%	6.0%
btotal	100.0%	100.0%	100.0%
VILLAGES			
way User (MSAS)	18.4%	21.0%	14.7%
ual (Property Tax)	81.6%	79.0%	85.3%
btotal	100.0%	100.0%	100.0%

: Tables 1-4

EXPENDITURES - 1965-69 SUMS	State	Metro	Non-Metro
STATE			
Construction	77.2%	83.2%	71.
Maintenance	14.3%	8.3%	19.
Other	8.5%	8.5%	8.
Subtotal	100.0%	100.0%	100.
COUNTY			
Capital	53.9%	57.0%	53.
Current	45.0%	38.7%	46
Other	1.1%	4.3%	
Subtotal	100.0%	100.0%	100
TOWNSHIP			
Capital	16.4%	32.0%	15.
Current	83.6%	68.0%	84.
Subtotal	100.0%	100.0%	100.
CITIES & VILLAGES			
Capital	57.6%	62.3%	51.
Current	42.4%	37.7%	49.
Subtotal	100.0%	100.0%	100.
ALL LEVELS			
Capital	66.4%	74.5%	60.
Current	28.6%	19.9%	19.
Other	5.0%	5.6%	5.
Total	100.0%	100.0%	100.

TABLE 7: STATEWIDE AND SEVEN-COUNTY METRO HIGHWAY MILEAGE AND METRO AS A PERCENT OF STATEWIDE

	December 31, 1960			December 31, 1970	
	State	Metro	Percent	State	Metro
ghway (State)	11,840.5	1,017.4	8.6%	12,102.3	1,095.0
on-dup)	29,012.5	1,683.2	5.8%	29,547.6	1,756.2
on-dup)	854.1	489.2	57.3%	1,289.6	813.1
SAH & MSAS	85.3	57.4		61.8	46.1
oads	15,961.0	727.4	4.6%	15,407.4	758.3
oads	54,919.1	1,835.9	3.3%	55,244.6	1,629.8
stems	2,415.5	99.2		3,220.1	52.9
al Streets	9,124.3	4,010.2	44.0%	10,865.6	4,947.7
	124,212.3	9,909.9	7.8%	127,739.0	11,099.2

Summary of Minnesota Mileage County Totals by Systems, as of December 31, 1960 and December 31
Minnesota Highway Department

TABLE 8: ESTIMATED METRO SHARE OF A TWENTY-YEAR STATE HIGHWAY PROGRAM
(in millions of dollars)

	METRO		NON-METRO		STATE TOTAL		ME SH
Capital Improvements	455		768		1223		37
Capital Improvements	120		280		400		30
enance and Other	420		720		1140		36
TATE TRUNK HIGHWAYS		955		1768		2763	
	126		894		1020		12
	235		95		330		71
TATE GRANTS		361		989		1350	
OTAL STATE HIGHWAY PROGRAM		1356		2757		4113	
tates	429		142		571		75
OTAL STATE HIGHWAY PRO-RAM PLUS INTERSTATES		1785		2899		4684	

Letters denote appropriate section in Part II for source or method of estimation.

NOTES FOR TABLES

on of the fiscal years of each level of government, see Note t.

CE: Statement of Income and Expenditures, Trunk Highway Fund, Statistical Supplement to the Biennial Report of the Minnesota Depa
ways (MDH), 1968-70 and previous years.
CE: Information provided to transportation committee by MHD, Attachment 1A.
L: No detail by county given.
CE: Statistical and Financial Information for Counties, MDH, 1970 and previous years.
L: County detail given
MENTS: Federal Agency funds not included. Property tax includes state replacements (sales tax in 1969) for some counties.
CE: Statistical and Financial Information for Townships, MHD, for fiscal year ending March 31, 1970 and previous years.
L: County subtotals given
MENTS: Property tax includes state replacements (sales tax in FY69 and FY70) for some counties.
CE: Total comes from expenditure figure from Report of the Public Examiner for Cities and Villages for fiscal years ending up to June,
vious years. MSAS allotments from Statistical Supplements to the Annual Report, MDH.
L: Public Examiner report provides detail by city and village. Statistical Supplements have MSAS allotments by city.
MENTS: Revenues for Streets and Highways are not given in Public Examiner Report. For example, Minneapolis uses over 12 accounts to
financing, each with borrowings and transfers. Subtracting MSAS allotments from the total expenditures gives a residual which
essentially property tax, since general fund is mostly property tax, borrowings are repaid with property tax, and much work is d
assessments. MDH PR 535 reports on individual cities, and the state total, roughly agree with these figures.
CE: State user total is total of Trunk Highway User Revenues and CSAH and MSAS grants.
MENTS: In addition, federal aid comes from federal user taxes. See Inventory, Table I.
CE: Total user taxes, before collection fees, are estimated in Inventory (Table IV, V) using Metro Share of vehicle registrations and
traveled.
L: No county estimates from Inventory. MDH provided Transportation committee with county estimates based solely on vehicle reg
MENTS: State user taxes consist of MV registration tax and MV fuel tax. The metro area has 45% of MV registrators, but only about 41%
miles traveled. Since the Inventory estimate bases fuel tax receipts on Vehicle Miles traveled, the Inventory estimate of the me
user taxes paid is less than that of the MDH. The metro share of the revenues for MSAS and CSAH funds is the same as for trun
revenues.
ed for Metro - See note c)
ed for Metro - See note d)
ed for Metro - See note e)

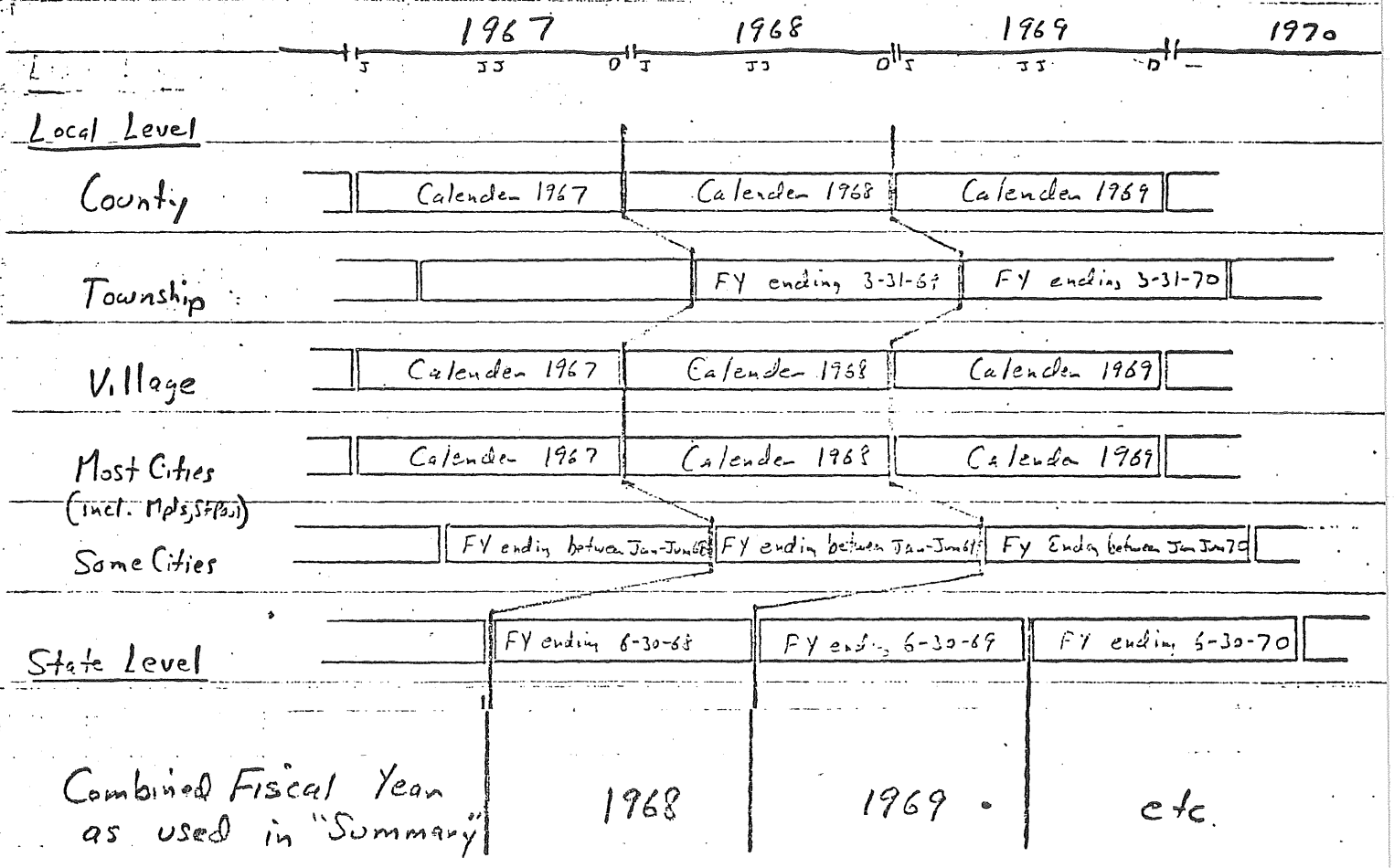
ES

CE: Statistical Supplements to the Biennial Report, MDH, 1968-70, and previous years, as aggregated in "Inventory."
MENTS: "Other" is administration, safety and miscellaneous
ote c)
ote d)
CE: Report of the Public Examiner for cities and villages, fiscal year ending up to June, 1970, and previous years.
L: Individual city data given; county subtotals are <u>not</u> presented.
CE: For method, See Inventory Report
L: County data not available.
ed for Metro - See note c)
ed for Metro - See note d)
ed for Metro - See note o)
Years: County fiscal year is the calendar year. Township fiscal year ends March 31. Village fiscal year is the calendar year. City
is the calendar year for most cities, (2) ends between Jan. 1 and June 30 for some cities. State fiscal year ends June 30.
To illustrate how fiscal year data is combined in the Inventory Report, the "aggregate fiscal year" 1968 in the Inventory is calen
counties, villages and most cities; fiscal year ending March, 1969 for townships; fiscal years ending between January-June 196
and fiscal year ending June 30, 1968 for the state.

Appendix A: FISCAL YEARS

County Fiscal Year is the Calender Year.
Township Fiscal Year ends March 31.
Village Fiscal Year is the Calender Year.
City Fiscal Year { is the Calender Year for most Cities;
ends between Jan. 1 and June 30 for some Cities.
State Fiscal Year ends June 30.

These Fiscal Years are combined as follows:



E. Environmental Impact of Present Transportation Financing Policy

In evaluating the present method of financing highway construction and maintenance in Minnesota, it is important to consider carefully the transportation policy which that method of financing perpetuates and the ultimate effect that such a transportation policy has on our physical and social environment. It should be emphasized that the effects described are concentrated primarily in the metropolitan area.

Such an evaluation touches on the following major areas of concern:

1. Air Pollution - Transportation sources are the nation's largest contributor to air pollution.[13] In testimony to this committee, the Minnesota Pollution Control Agency supplied the following data to demonstrate the present contribution of transportation sources to Twin Cities area air pollution.[14]

TABLE I. AIR POLLUTION FROM TRANSPORTATION SOURCES IN MINNEAPOLIS-ST.PAUL-AIR QUALITY CONTROL REGION

Pollutant	Contribution of Transportation Source
Carbon monoxide	98%
Hydrocarbons	78%
Nitrogen oxides	56%
Particulates	10%
Sulfur dioxide	3%

According to the MPCA, highway vehicles constitute approximately 95% of the transportation sources included in the study which resulted in the above data.[15] Nationally, each year, our approximately 100 million highway vehicles emit about 125 million tons of air pollutants of all types, including an estimated 97 million tons of carbon monoxide, 16.5 million tons of hydrocarbon, and more than 9 million tons of nitrogen oxide.[16] This amounts to approximately 45% of the total emissions from all sources of air pollution.[17]

The effect of air pollution takes many forms, as John R. Quarles, Jr., Assistant Administrator of the Federal Environmental Protection Agency stated in May of 1972:[18]

> ". . .not only are these emissions a major threat to public health but they damage or destroy valuable vegetation and in interaction with the atmosphere are responsible for extensive, costly and premature degeneration of our buildings and monuments."

In the Twin Cities metropolitan area, the effects of air pollution are now so severe that the MPCA has predicted that air quality standards imposed by the Federal Environmental Protection Agency will not be met when they go into effect in 1975.[19] According to the MPCA, the level of carbon monoxide in the Twin Cities atmosphere in 1975 will be about 40% greater than the federal ambient air quality standards and by 1977 the nitrogen oxide level will be as much as 25% above the tough federal standards.[20] In testimony to this committee, the MPCA strongly suggested that controls on the use of automobiles, especially during peak hours, will have to be implemented in order to meet the tough federal air quality standards, which require by 1975 that carbon monoxide and hydro carbon emissions be reduced by 90% from the 1970 levels.[21]

While the variety of alternatives to auto travel makes it difficult to determine the effect the widespread use of transit vehicles would have on air pollution, it is clear that a beneficial effect on air quality would result. Assuming the presently available bus technology, studies have shown that two buses carrying 100 people replace about 66 cars which carry an average of only 1.5 people.[22] More sophisticated means of transit using alternative methods of propulsion could have an even more dramatic effect on the level of air pollution if available and used on a large scale basis.

2. Mobility - Because our current emphasis in transportation is on highway construction and maintenance, the automobile has become a necessity of life, without which access to employment and to recreational, educational and housing opportunities becomes a virtual impossibility.

The "chicken and egg" question about which came first, the automobile or the drive-in movie, becomes somewhat academic to the intercity resident who has access to neither. It really doesn't matter whether urban sprawl necessitates the automobile or whether the automobile encouraged and perpetuated urban sprawl. The point is that millions of poor, elderly, and handicapped Americans are immobile prisoners of a transportation policy which places them at a wholly unfair disadvantage to the large majority of persons who can afford automobile transportation.

In the Twin Cities area alone, 15% of all households (about 86,000) did not own an automobile as recently as 1970.[23] The problem of mobility under our present automobile-dominated transportation policy becomes especially acute in certain portions of a given city. For example, within the Model City area of Minneapolis in June of 1970, one-third of all households did not own a car and one-half of the carless households had an annual income of less than $3,000.[24]

Such a lack of mobility inevitably increases the difficulties of locating meaningful employment. While other factors must certainly enter in, a lack of mobility has no doubt contributed to the 11.4% unemployment rates of residents of the Model City area in July of 1971 as compared to a city-wide unemployment rate of 7.2%.[25]

In testimony delivered to this committee, the Greater Metropolitan Federation stated that 50% of the unemployed residents in the above study area did not have a car available for daily use.[26]

The Federation's testimony related the severe problems experienced by Model City agencies such as the Concentrated Employment Program in placing otherwise qualified persons in job opportunities located at such a distance from the applicant's home that automobile transportation was a necessity for acceptance. The Federation urged the adoption of a "balanced transportation financing policy" which would help to equalize the opportunity for mobility of all citizens.

3. Land Usage and Asthetics - Almost by definition, our present highway-orientated transportation policy necessitates the building of massive freeways which impair prudent land usage and disrupt the lives and property of persons unfortunate enough to live in the path of freeway development.

Generally speaking, highways require large amounts of land in places where it is in shortest supply. In the average American city 40% of the high-density downtown area is devoted to the autombile.[27] Without the need for massive freeways, bridges and approaches, not to mention the needed parking lots and ramps, a significant portion of that land might be converted to taxable commercial use or used for recreational purposes.

Beyond the value of space required to continue the unimpeded building of highways is the fact that highways require land in a nearly straight line. Without careful preplanning, such construction often leads to serious disruption of previously unspoiled natural land invaluable ecologically and esthetically for that very reason, and to the filling of marshes and wetlands of critical ecological importance.

Not only does continued emphasis on the building of highways interfere with the ecology of plants and animals but, especially in our metropolitan urban centers, our present unbalanced transportation

policy continually disrupts the lives of countless citizens who live in or near the path of freeways. It is a cruel irony of our political system that those whose personal lives are most likely to be disrupted by the divided neighborhoods, the dangerous air pollution, and the annoying noise of uncontrolled freeway construction and at the same time the most likely to benefit from a greater emphasis on transportation alternatives and in the least favorable political position to make their views felt at the decision-making level. It is only in very recent years that those whose lives stand to be disrupted by the construction and usage of freeways near their homes have organized successfully to halt or prevent freeway construction. Transportation policy-makers need to take note of the growing public discontent with our unbalanced urban transportation system in making policy decisions which will affect the growth and usage of transportation services for generations to come.

4. Safety and Personal Time Consumption-The cruel slaughter on American highways has reached a level of national shock and alarm. In 1970 alone, nearly 55,000 persons died and over 2 million persons were injured in highway traffic accidents. In over 14 million accidents, property damage resulted in an estimated $13,600,000 burden on the American public.[29]

While one must be careful in interpretting data comparing the safety of different types of passenger vehicles, it is quite clear that the automobile is the most deadly of all passenger vehicles in widespread use. The following data, provided by the National Safety Council for 1970, demonstrates that fact.[30]

TABLE II. RELATIVE SAFETY OF TRANSPORTATION ALTERNATIVES (1970)

Type of Vehicle	No. of Deaths	No. Deaths/100 Passenger Miles
Passenger Cars and taxis	34,800	2.10
Buses	130	0.19
Railraod passenger trains	10	0.09
Scheduled domestic airlines	0	0.00

Note: While the total number of deaths for each type of vehicle is somewhat misleading because of the much greater use of automobiles as a method of transportation, the figures in the right-hand column provide a realistic comparison of relative safety of the listed vehicles.

In addition to the toll of human lives and property exacted by our present unbalanced transportation policy, increasing reliance on automobiles as a means of transportation makes a twice-daily disruption in the lives of each person who drives to and from work in our major urban centers. In addition to contributing to the number and seriousness of traffic accidents, the rush-hour traffic congestion which occurs twice daily in every major urban center has a way of cutting into the leisure and work time available to every commuting American. Countless traffic delays and tieups have a way of eating into each day of nearly every urban resident's life - delays which increase in length each year and which will continue to increase so long as our self-imposed reliance on the automobile continues.

5. Energy Consumption - A somewhat separate, yet related environmental impact of our present perpetuation of an unbalanced transportation policy is the accelerating depletion of our nation's major sources of energy.

Transportation sources account for about 24% of the total consumed in the United States, or about 100 billion gallons of petroleum.[31] This figure represents more than one-half of the 174 billion gallons of the world's fast-waning petroleum fuel supply consumed each year in the United States.[32]

Studies have shown that the typical automobile travels 10,000 miles per year and in so doing uses an average of 670 gallons of fuel.[33] This 670 gallons amounts to about 2 tons of fuel annually or twice the weight of the car. In 1960, there were about 150 million automobiles in the world consuming about 300 million tons of petroleum.[34]

In comparing the energy usage of various kinds of urban transportation, the automobile becomes a major culprit in the rapid depletion of our irreplaceable supply of fossil fuels. In measuring the fuel efficiency of cars, business, and commuter trains by the number of passenger miles travelled per gallon, the automobile is about three times as inefficient as the commuter train and ten times as inefficient as the bus.[35]

As we continue to burn up irreplaceable fossil fuels at an unprecedented rate, a noted transportation energy expert, Dr. Richard A. Rice of Carnegie-Mellon University, has predicted that "perhaps as much as a fifty to seventy per cent reduction in urban motoring and a substitution of even amounts of walking, cycling and mass transit will be needed to produce a noticeable effect on urban transport energy consumption."[36]

In addition, of course, to the increasing amounts of fuel required to propel automobiles is the ever-accelerating quantity of fossil fuels and other raw materials which are required to

produce and equip them. While the committee does not have access to data which would precisely define the amount of energy consumed in the production and equipment of automobiles, such information must certainly be considered in at least a general way in an overall determination of the social-environmental consequences of our present auto-dominated transportation policy.

Our present transportation policy, emphasizing and encouraging the auto, appears to be racing headlong into a wall - the absolute constraint of exhausted energy. Neither the public officials of this state, or of this nation can responsibly perpetuate a transportation policy which provides for a system which may become absolutely unusable for the vast majority of our citizens.

Our present perpetuation of an unbalanced transportation policy, then, does have a tremendous impact on our natural and social environment ranging from the pollution of our air, disruption of our neighborhoods to the perpetuation of economic and social disadvantages. Continued overdependence on the automobile as a means of urban transportation demands a careful weighing of its high social costs against the advantages which have made it so much of a way of life for most Americans. The committee has made such a careful weighing an important consideration in making its recommendations on a transportation financing policy for Minnesota.

F. Effects of Branch Line Railroad Abandonment on State Transportation Financing Policy

In the course of its study, the committee also considered carefully the potential impact which abandonment of branch railroad lines might have on future transportation needs in Minnesota, since widespread abandonment of branch line railroads in rural Minnesota would require a

massive increase in construction and upgrading of highways to handle the need for alternative methods of freight transportation.

The issue is closely related to the committee's consideration of Article XVI of the Minnesota Constitution, since it has a potentially great impact on priorities for transportation financing policy in years to come.

1. Current Situation - Rural Minnesota has a long history of reliance on railroads as a method of transporting farm products out and manufactured goods in. Many rural communities were initially established by the railroads to serve as marketing centers for nearby farmers. It was then the practice to space the communities at 7 to 10 mile intervals on the railroads to insure every farmer a marketing center within a day's traveling distance by horse-drawn wagon.

Accoring to the State Public Service Commission, Minnesota presently has nearly 12,000 miles of railroad trackage operated by 18 railroads.[37] Over 90% of this trackage is owned and operated by the nine Class I railroads operating in the state.[38] While precise figures are not available, it is apparent that a substantial portion of this trackage is in the form of branch lines and subject to possible abandonment review by the railroads.

The key consideration to this committee is the potential impact of large-scale abandonment of branch lines on the need to communities deprived of rail service. According to the Minnesota Department of Economic Development, there are presently 157 incorporated communities, 24 unincorporated townships, and 101 other unincorporated areas served by railroad lines but having less than 9-ton road limits.[39] Of these communities and townships, 115 have a total of 177 grain elevators.[40] Since the need for upgrading highways would be largely created by these grain elevators, the 115 communities

referred to above are the ones most likely to require upgrading of highway service as a result of large-scale branch-line abandonments.

Present and projected plans for abandonment of branch rail lines were spelled out in a February, 1972, report of the Minnesota Public Service Commission and in testimony by major railroads to this committee on June 29, 1972.[41]

In this testimony, several railroads and the Minnesota Railroad Association emphasized that they did not have a "master plan" for abandoning railroad service to rural Minnesota.[42] Rather, they indicated that each line is carefully evaluated, using varying sets of criteria, before making a decision to seek abandonment. The criteria for evaluating branch lines varies from line to line and may include economic factors such as the total amount of freight revenue generated over a line annually, the per-mile revenue generated over a line annually, the number of carloads per mile per year carried over a line, etc.[43] Other evaluation factors cited were the nature of the economic viability of the area, and general public and governmental attitude toward the railroad within a given state or area.

Using these kinds of criteria, several railroads testified that substantial branch-line trackage is now under evaluation with a possible eye toward application for abandonment at some future date. One of the more candid lines, the Chicago and Northwestern, feels that its total trackage has to be reduced by approximately 2.5% in order to really serve the "public interest" of the Midwest by "making the agricultural products of the Midwest competitive in world markets."[44]

In a highly controversial report released in 1971, the Land O' Lakes Company has predicted that rail service to most of rural Minnesota will be sharply curtailed by 1980. The report, distributed to

member cooperatives, urges that decisions on expansion of facilities be made accordingly.[45]

The Land O' Lakes projections, which have been disputed by the railroads, were based on three assumptions: 1) branch lines will be abandoned by 1975; 2) lines that have a weight-carrying capacity of less than 263,000 pounds will be phased out by 1975; and 3) lines that have a weight-carrying capacity of at least 263,000 pounds must connect points that will move an adequate volume of products to generate an income for the railroad companies.[46]

In order for railroads to operate a line profitably, the line must be able to carry heavy weights for considerable distance. It was for this reason that Land O' Lakes used assumptions (2) and (3) above. The 263,000 pound requirement is based upon the premise that a line must have this carrying capacity to move 100-ton hopper cars, which are anticipated to become more numerous in the future. The elimination of lines that have a weight-carrying capacity of 263,000 pounds was made after projecting future traffic volumes.

The Land O' Lakes study contemplates that abandonment of branch lines will continue until they become non-existent, because these lines generate very small revenues for the railroads. In addition, the condition of many of these lines would require high dollar investments for upgrading.

Land O' Lakes does, however, recognize that an analysis of this nature has its limitations: 1) certain branch lines may be retained if they move a considerable volume of traffic; 2) legislation, both proposed and not yet proposed, could alter the study's projections.[47]

Although the validity of the Land O' Lakes report may be questioned because of the above factors and the contrary testimony

of the railroads, it does point up the important role which railroads have in determining economic growth and development in rural Minnesota and the potential impact of large-scale abandonment on the pattern and growth of population in areas which now rely heavily on branch line rail service.

2. The Potential Economic Impact - In the absence of both rail transportation and upgraded highways, economic development, and even continued survival, could be made increasingly difficult for hundreds of small communities in rural Minnesota. In framing transportation financing policy for the future, this fact must be considered. The policy of knowingly allowing certain communities to pass out of existence must be weighed against the expenditure of large amounts of money on highway construction and upgrading in rural Minnesota.

In testimony to this committee, Assistant Highway Commissioner, F. C. Marshall, predicted that $174 million would be required in construction costs alone to give all Minnesota communities access to nine-ton roads.[48] He predicted that additional costs for right-of-way acquisition or improvement of local roads, not to mention ongoing maintenance costs, would have to be included in arriving at a total estimate of the cost of upgrading all state highways to nine ton capacity. Assistant Commissioner Marshall further pointed out that the Land O' Lakes study predicted that it would cost $79.7 million to provide unrestricted highway access to communities affected by the railroad abandonments predicted in the study.

3. Potential Resolution of the Problem - From its very brief examination of the problem of railroad abandonments, the committee is in no position to recommend specific action. The committee does, however, refer to the Legislature the following proposals, with the

hope of provoking further study of a pressing problem. We might follow one of these courses:

(a) Hold the line against railroad abandonment: Some would have the State Legislature, the Congress, and the regulatory agencies (the Interstate Commerce Commission and Public Service Commission) impose tough restrictions on the abandonment of additional trackage by railroads. Present rail service could then be retained in all communities but the future economic viability of railroad service as a whole might be severely clouded.

(b) Allow abandonments and replace with upgraded highways: As mentioned above, projected rail abandonments could be allowed to take place and the lost transportation service replaced by upgrading highways in a number of communities. Again, the enormous costs of such an undertaking would have to be weighed against a policy of "natural selection" to determine the future growth, or even the existence, of each locality.

(c) Subsidize railroads to operate the branch lines: In order to avoid the cost of building and upgrading highways to a number of communities to compensate for rail service abandonment, railroads could be directly subsidized to maintain branch line service. Such an operation is currently in effect in Canada through a statutory provision for subsidation of branch lines that the government decides should be maintained.[49] Accounting procedures determine annually the out-of-pocket loss on the particular line to be retained, which losses are then paid by the government. Judicial review would no doubt be required to determine whether such a venture would qualify under Article IX, Sec. 1 of the Minnesota Constitution as an expenditure of state tax receipts for a "public purpose." If not, such

subsidation plan would require a special constitutional authorization.

(d) State ownership of branch line railroad lines: In testimony before this committee, branch line railroads were several times referred to as the "potential" passenger lines of the 1970's - meaning, of course, that they were economically unproductive to the railroads and doomed to probable extinction. To prevent total elimination of passenger rail service, the federal government was finally required to go into the passenger railroad business through formation of the National Railroad Passenger Corporation (Amtrak) in May of 1971. Another policy decision might have to be made at some future date that the continuation of branch line service to rural areas of the State is so important that the government must assume responsibility for providing that service. Again, State constitutional questions involved in such a venture would have to be resolved.

4. Pending Federal Legislation - As mentioned above, alterations in public and governmental attitudes toward railroads is one of the factors which could affect the level of requests for branch line abandonments in the future. As a result, a brief overview of present procedures for abandonment and pending federal legislation on the subject might be helpful in evaluating the above discussion.

Present procedures for abandonment: Under present procedures for considering applications for railroad abandonment, the burden of proof is on the applying railroad company to demonstrate that "public convenience and necessity" will not be undermined by the proposed abandonment.[50] In making such a determination, the Interstate Commerce Commission considers such factors as the economic viability of the line, available alternative methods of shipment, and the

transportation needs of the area served by the line.[51]

After hearing the evidence, either in a public hearing or in briefs filed by the railroad and users, the ICC examiner then issues his finding on whether the "public convenience and necessity" would or would not be undermined by the proposed abandonment and the abandonment is either granted or denied. Appeals are thereafter possible through both the ICC and the federal courts.[52]

According to the Minnesota Public Service Commission, applications for approximately 27 abandonments have been made in the State in the past five years. Of these applications, 15 were granted in total, 3 were granted in part, and 9 are still pending before the ICC.[53]

Legislation proposed by Senator Vance Hartke: As a part of a comprehensive bill which seeks to make railroads more economically viable and competitive, Senator Vance Hartke of Indiana has proposed that an alteration be made in present procedures for considering railroad abandonments.[54] The major change proposed in the Hartke proposal is that, in making its determination on whether or not to allow abandonment, the ICC could "consider" certain economic factors such as, "losses in operating the line to be abandoned, as measured by total costs of service including capital and maintenance cost to continue the line at a physical standard necessary to provide safe, reliable, and efficient service; extent of actual use of and need for the line by shippers or receivers; and the development of an efficient and economic transportation system" but that "no such finding (allowing an abandonment) shall be made unless continued operation of the line proposed to be abandoned will produce sufficient revenue to cover the relevant variable costs of handling traffic to, from, and beyond the line."

Legislation proposed by the Department of Transportation: In another bill introduced at the request of the Department of Transportation, additional specific criteria are spelled out to govern the ICC in determining whether or not the "public convenience and necessity" would be undermined by a proposed abandonment.[55] If upon complaint to the ICC by a user, it is determined that the proposed abandonment would substantially injure the user, the abandonment may be suspended for six months. During this period, the ICC must determine whether the line lost money in the past twelve months. In determining losses, the bill adopts a standard based on the variable costs of the line or operation in question.

For light density lines or operations defined in the bill as those failing to generate at least one million gross ton miles of traffic per mile over the twelve-month period prior to the application, where losses can be presumed, the bill does not require that the railroad initially demonstrate losses. Where the ICC finds that a particular line or operation is covering its variable costs, the application must be denied, except that no application shall be denied if the continuation of such line or operation would require the making of capital improvements, the economic cost of which will not be covered by an excess of revenues over the variable costs of such line or operation over the life of such improvements. If the railroad did lose money, and shippers have effective substitute service available, the application must be granted. At the end of this period, the ICC must grant abandonment unless revenues are then found sufficient to meet variable costs through, for example, improved operating efficiencies, rate adjustments, or direct financial compensation from private or governmental entities.

Sponsors of the bill claim that the proposed sequence of steps and precise standards required for settling abandonment cases "should reduce the expense and delay of abandonments, while protecting the interests of users substantially affected by an abandonment." It is not difficult to see, however, however, that both bills could only serve to accelerate the abandonment process.

It should be noted that both bills contain comprehensive proposals aimed toward insuring the future economic viability of railroads, either by providing financial assistance to railroads, by encouraging railroad investment in more efficient equipment, or by eliminating discriminatory state taxation policies toward railroad companies.

While neither of the above proposals seems likely to be enacted into law during this session of Congress, the committee feels that progress of these or other future proposals should be considered carefully in the determination of overall transportation financing policy in Minnesota.

G. Committee Consideration

During the many hearings which the committee held, many transportation related problems were raised by both witnesses and committee members. Residents of rural Minnesota are genuinely concerned that their towns and villages may not have adequate transportation facilities to ship goods and products the year round. Virtually every town would like a nine ton capacity road providing year-round, all-weather access. The cost of such a system, according to the Minnesota Highway Department, would be prohibitive, apparently beyond the capacity of this State to provide. Using the available money wisely requires that such roads be built only into regional growth centers. Dwindling rural population, especially the loss

of the young, will become even more serious in the future; only then will the loss of rural vitality be really experienced. Many rural witnesses see better roads as a means of attracting industry and retaining their young people. Although it is true that industry will not locate where adequate transportation facilities do not exist, there is no assurance that industry will automatically and inevitably be attracted by new roads. The State Legislature must insure that all factors for rural growth are present before approving massive expenditure for roads to a particular area. Doing it solely for the hope of attracting industry and jobs and retaining rural population and vitality may be both fruitless and wasteful.

Rural towns are losing rail service. During the past year less than carload lots shipments have been discontinued throughout Minnesota. Trackage is being abandoned. Because of the potential loss of such rail service, many towns, especially those with grain and fertilizer facilities, are gravely worried about the lack of nine-ton all-weather roads. The Legislature should look carefully at such abandonment and weigh the cost of requiring rail facilities to remain open against the cost of constructing and maintaining the roads. In some cases abandonment will be justified. Some towns currently serviced by branch lines have had no rail shipments for over a year. In fact, such towns are getting along without either rail service or a nine-ton road. Certainly, the Legislature should not waste money on unnecessary construction.

According to many witnesses, the Highway Department is unresponsive to their needs. Either roads weren't built, they were built in the wrong places, they were too expensive for local participation in the widening processes, by-passes were not constructed, or State requirements for local participation were beyond their

financial capacity. Incongruously, in spite of such criticism, local witnesses were often opposed to any change in Article XVI which would provide for legislative control of the State Highway Department.

The trend in public attitude seems to be toward more local participation in the making of highway decisions. In its proposed policy position of June 16, 1972, the League of Minnesota Municipalities urged greater influence by local officials in the allocation of trunk highway funds.

Some rural businessmen believe that the cost and time of shipping products would be substantially reduced if expressways were constructed, especially along Highway 12 in west central Minnesota. This feeling was expressed strongly by Litchfield business people to the Commissioner of Highways. The potential conflict between statewide interest and local interest was indicated in one of the letters which expressed the belief that the residents of Minneapolis and St. Louis Park who banned together in opposition to I-394 were acting strictly out of selfishness and that his greater interest demanded that the road be built. There is no doubt that the cost to the shipper would be reduced, but the State must ask whether that shipping cost savings is outweighed by the additional expenditures for all the people of the State for upgrading the highway system.

H. Committee Recommendation on Article XVI

Before proceding to a substantive recommendation on highway provisions of the Minnesota Constitution, the committee is referring to the Commission's Committee on Structure and Form recommendation to delete the language in Article IX, Sec. 5, which duplicates the authorization in Article XVI, Sec.10, to collect a gasoline tax and dedicates

the funds raised from such a tax to the construction and maintenance of highways.

In considering the various alternatives available in arriving at its recommendations regarding Article XVI, the committee took note of the impact which the automobile has made and is now making on our natural and social environments. To combat this impact, the committee wholeheartedly supports the development of attractive transportation alternatives, the development of more efficient automobile engines, and mandatory installation of effective pollution control devices on all motor vehicles.

Despite all its shortcomings, however, the automobile has contributed immeasurably to the growth, development and mobility of the American people. Americans are now irretrievably dependent on the automobile as a means of transportation. It is a necessity of life for millions who use an automobile for employment, recreation, or other forms of economic and social activity.

Because of this dependence and reliance, the committee feels we must, at least at present, continue to adequately fund highway construction and maintenance. Failure to continue such a policy would mean a swift deterioration of the mobile status of millions of Americans, a deterioration which the American people will not allow to occur.

It is a stark reality that constitutional revision requires enthusiastic popular support from all areas of the State. In its hearings, the committee found support for undedication of highway funds only in the metropolitan areas, and even there, support was nowhere near unanimous. From its hearings, the committee has concluded that any substantial tampering with Article XVI would be politically unrealistic and that any amendment which proposed to

do so would be overwhelmingly defeated.

This recommendation of the committee does not reflect opposition to mass transit. We are aware that transportation alternatives are and will be required to meet the varying needs of our State. Financing these alternatives should be provided, however, from other available sources, as at present. A balanced transportation policy can thus be provided without disrupting the lives and incomes of the millions of Americans who so heavily rely on the automobile for the convenience and mobility which it provides.

With all of these considerations in mind, the committee recommends no change in that part of Article XVI which dedicates motor vehicle and gasoline taxes to the construction and maintenance of highways.

As has been noted earlier in this report, Article XVI also suggests mileage limitations for streets and highways eligible for state aids and imposes restrictions on the highway bonding authority of the state, both in terms of total building authority ($150 million) and interest rate (5%).

The Legislature has acknowledged the meaningless nature of the suggested mileage limitations by extending them as the Article provides it may. The limitations on bonding authority and interest rates are much better left to the Legislature, to alter as changing circumstance might require.

Accordingly, the committee recommends repeal of mileage, interest and bonding restrictions currently imposed on the Legislature by Article XVI.

The committee also recommends that a comprehensive study be undertaken to determine the need for revision of the state-aid distribution formula currently provided in Article XVI.

I. Minority Recommendation

Understanding the problems and faced with the current constitutional provisions, the committee considered the following alternative proposals in the formulation of a substantive recommendation:

1. Leave Article XVI unchanged.
2. Amend Article XVI to eliminate interest, bond and mileage limitations.
3. Amend the apportionment formula for division among the three funds.
4. Amend the Article to permit the Legislature to define purposes.
5. Amend Article XVI to permit a percentage of funds to be used for other purposes. Essentially, that is, create a transportation fund.
6. Create a single transportation fund with legislative authority to apportion as necessary.
7. Retain the current highway fund and create a new separate dedicated fund for mass transit purposes.
8. Eliminate all dedicated highway funds, leaving the entire matter to the Legislature.

The minority feels that Proposal 1 does nothing to resolve current problems and is rejected as inadequate. Number 2 only resolves the recent problem caused by high interest and excessive Highway Department demands. Proposal 3 needs more careful study and evaluation before a specific recommendation could be made. Proposal 4 would greatly increase flexibility, permitting use of the user tax fund to pay the full cost of highways. Funds could be expended to eliminate auto-caused air pollution, for example. A dedicated fund is maintained by proposal 5. However, it still has the inherent rigidity undesirable in constitutions. Fear of inadequate planning time and financial commitment are two reasons frequently offered for retaining dedicated funds. Proposal 6 meets those objections, yet provides much desired flexibility to the Legislature to promote the changing needs. Proposal 7 is less desirable since it would tend to be more rigid. Obviously, the most flexible

approach is the elimination of all dedicated funds leaving the allocation matters to the Legislature. Consequently, the minority recommends the repeal of Article XVI. The recommendation of the minority to repeal Article XVI is based both on principle and on policy.

In order to function in a responsible and responsive manner, the Legislature must be free to make and implement major policy decisions which affect large numbers of residents of the State. In order to so act, the Legislature must be free to appropriate funds as changing demands upon the State's priorities become evident.

The voters of this State elect legislators every two or four years and expect that they will represent them in a responsible and responsive manner. The minority is confident that the Legislature can be trusted to establish a state transportation financing policy which will best meet the needs of all the people of our State. Such confidence is already merited by the Legislature's responsible handling of financing policy for other major components of the State budget and the minority has no reason to doubt that transportation financing would be handled by the Legislature in a responsible manner. Failure to assume such responsibility will no doubt result in new legislative faces more attuned to the wishes of constituents.

The minority also supports the undedication of highway funds on policy grounds. Despite taxes on motor vehicles and gasoline, the automobile is not coming close to paying for its enormous cost in depleting our natural and social environments. We must move toward a more balanced transportation financing policy in order to allow and encourage the existence of the kind of transportation alternatives which will be required to meet the needs of tomorrow.

The magnitude of the current transportation policies is reflected in the growing support for undedication of highway user taxes at all levels of government. Secretary of the U.S. Department of Transportation, John Volpe, recommended to Congress a "Federal-Aid Highway and Mass Transportation Act of 1972" which would establish a new urban transportation program for financing urban mass transit and highway projects. It would delegate much of the authority to determine how the funds were to be spent to local authorities. Funds would be provided by current user taxes and appropriations. In addition, the act would provide a rural general transportation program while continuing existing primary and secondary federal aid highway systems.[57]

Recognition of the inseparability of urban problems from transportation problems was also made by the Democratic National Convention in its platform, when it called for the creation of a single transportation trust fund permitting greater local decision-making.[58]

Such a balanced and flexible transportation policy could still provide the same or even higher level of transportation service for rural areas of the State. The minority is confident that the Legislature would continue to provide for a comprehensive program of highway construction and maintenance for rural Minnesota.

The minority is not unaware that such a proposal is bold and controversial. Its adoption will require a dedicated effort of all those who desire a continuation of the kind of opportunity for mobility which has allowed the growth, development, and individual fulfillment which we as a nation have been fortunate enough to experience.

Whether or not Article XVI is deleted, the minority recommends that a comprehensive study be undertaken to determine the need for revision of the state-aid distribution formula presently contained in Article XVI.

IV. RAILROAD PROVISIONS

A. Background and Present Provisions

Two provisions of the present Minnesota Constitution relate directly to railroads.

Article IV, Sec.32(b), requires that any change in the taxation of railroads on a gross earnings basis be submitted to the voters for their approval in a popular referendum.

Article IV, Sec. 15, restricts the bonding authority of municipalities to aid in the construction of railroads to 5% of the value of taxable property within the municipality.

B. Committee Consideration and Recommendation

To determine the position of railroad companies which serve Minnesota concerning the constitutional frozen taxation policy provided in Article IV, Sec. 32(b), the Transportation Committee held a joint hearing with the Commission's Finance Committee on June 29, 1972. Because the issue of railroad taxation is more directly related to the state's financial policy than it is to transportation policy, the Transportation Committee defers to the Finance Committee for a recommendation on retention, repeal, or alteration of Article IV, Sec. 32(b).

Article IX, Sec. 15 appears to authorize a limited expenditure of public funds by municipalities to aid in the construction of railroads. If this interpretation is accurate, the section might be, at some point in the future, a direct authorization for local borrowing for the construction or maintenance of branch line railroads."

It is the committee's position that the provision is presently obsolete and so recommends its deletion to the Commission's Committee

on Structure and Form. If, in the future, constitutional authorization is needed to expend state or local funds for construction and maintenance of railroad branch lines or mass transit systems, the committee feels specific authority should be provided, not through a constitutional provision originally drafted for other purposes, but through a new constitutional authorization.

V. SUMMARY OF RECOMMENDATIONS

The committee recommends no change in the aeronautics provisions of the Minnesota Constitution as detailed in Article XIX.

The committee recommends to the Commission's Structure and Form Committee the deletion of Article IX, Sec. 5 which duplicates the authorization in Article XVI, Sec. 10 to collect a gasoline tax and dedicates the funds raised from such a tax to the construction and maintenance of highways.

The majority of the committee recommends no change in Article XVI as it relates to the dedication of motor vehicle and gasoline taxes to the construction and maintenance of highways. The minoirty of the committee recommends repeal of Article XVI and the statutory disposition of all matters relating to surface transportation financing policy.

The majority of the committee recommends repeal of mileage, bond and interest limitations contained in Article XVI. Whether or not Article XVI is repealed the committee recommends a comprehensive study to determine the need for revision of the state-aid distribution formula presently contained in Article XVI.

The committee defers to the Commission's Finance Committee on a recommendation for deletion, retention or alteration of Article IV, Sec. 32(b) which requires that any change in the taxation of

railroads on a gross earnings basis be submitted to the voters for their approval in a popular referendum.

The committee recommends to the Commission's Structure and Form Committee the repeal of Article IX, Sec.15 which restricts the bonding authority of municipalities to aid in the construction of railroads to 5% of the value of taxable property within the municipality.

VI FOOTNOTES

[1] Constitutions of the United States, Legislative Drafting Research Fund, Columbia University, New York.

[2] Alaska, Florida, Georgia, Hawaii, Michigan, Missouri, Montana, New Jersey and Illinois.

[3] Minnesota Constitution, Article XVI, Sec.5.

[4] Michigan Constitution, Article IX, Sec.9.

[5] Montana Constitution, Article VIII, Sec.6.

[6] Report to the Constitutional Study Commission, Minnesota Department of Highways, July 21, 1972.

[7] Minnesota Statutes 162.09.

[8] Minnesota Statutes 162.05-162.08.

[9] Minnesota Statutes 161.04 and 161.50.

[10] Letter from David L. Norrgard, Assistant Executive Secretary, League of Minnesota Municipalities, February 9, 1972.

[11] Ibid.

[12] Ibid.

[13] Address by John R. Quarles, Jr., Assistant Administrator, Environmental Protection Agency, to the 14th Highway Transportation Congress, Washington, D.C., May 31, 1972.

[14] Testimony of John G. Olin, Chief, Technical Services Section, Division of Air Quality, Minnesota Pollution Control Agency, May 12, 1972.

[15] Ibid.

[16] Address by John R. Qurles, May 31, 1972.

[17] Testimony of John G. Olin, May 12, 1972.

[18] Ibid.

[19] Ibid.

[20] Ibid.

[21] Ibid.

[22] Address by John R. Quarles, May 31, 1972.

[23] Metropolitan Development Guide, Transportation Section, Metropolitan Council, February 25, 1971, p.14.

[24] New patterns: Tranportation Options for Model City Residents, Planning and Development Dept., City of Minneapolis, 1971, p.49

[25] Ibid., p.28

[26] Testimony of Marcia Townley, Greater Metropolitan Federation, May 21, 1972

[27] Address by John R. Quarles, May 31, 1972.

[28] Accident Facts, National Safety Council, Chicago, 1971.

[29] Ibid.

[30] Ibid.

[31] Richard A. Rice, "System Energy and Future Transportation", Techno-Logical Review, January, 1972, p.31.

[32] Ibid., p.31

[33] Ibid., p.32.

[34] Ibid., p.32.

[35] Ibid., p.36.

[36] Ibid., p.37.

[37] "Railroad Mileage in the State of Minnesota," Minnesota Public Service Commission, August 15, 1972.

[38] Ibid.

[40] "1970 Population Distribution of Incorporated Minnesota Communities and Certain Townships Served by Railroads and by Highways with less than Nine Ton Road Limits," Department of Economic Development," June 14, 1972.

[41] "Communities With Grain Elevators Located on Railroad Lines and on Highways with Less than Nine Ton Load Limits," Department of Economic Development, June, 1972.

[42] Report of the Minnesota Public Service Commission, Docket Number 0417-SE, File Number A-8347, May 16, 1972.

[43] Letter from Gordon Forbes, Counsel, Minnesota Railroads Association, June 13, 1972.

[44] Testimony of Burlington Northern, Chicago and North Western, Soo Line, etc., June 29, 1972.

[45] To Those Interested in the Future of the Midwest," open letter from Larry S. Provo, President, Chicago and North Western Transportation Company, June 1970.

[46] Memo to Managers and Presidents of Local Member Coops, Land O' Lakes, Inc., Fort Dodge, Iowa, December 15, 1971.

[47] Ibid.

Ibid.

[48]Testimony of F. C. Marshall, Assistant Commissioner, Minnesota Department of Highways, June 15, 1972.

[49]Testimony of Byron O. Olsen, attorney, Burlington Northern Railroad Company to Minnesota House of Representatives Committee on Regulated Industries, Subcommittee on Transportation, May 17, 1972.

[50]49 U.S.C.A. §13a.

[51]Staff Interview with Richard Gill, Special Assistant Attorney General, Minnesota Public Service Commission.

[52]Ibid.

[53]Staff interview with Harold A. Kind, Secretary, Minnesota Public Service Commission.

[54]S. 2362, July 28, 1971.

[55]S. 2842, November 11, 1971.

[56]Letter from Department of Transportation to the President of the Senate and Speaker of the House of Representatives, November 5, 1971.

[57]Letter from Department of Transportation to the President of the Senate and Speaker of the House of Representatives, April 21, 1972.

[58]Congressional Quarterly Weekly Reports, July 15, 1972, p.1735-1736.

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Persons and Organizations Testifying Before the Committee:

February 3, 1972, St. Paul

Leonard Ramberg, Minnesota State Automobile Association
Verne Ingvalson, Minnesota Farm Bureau Federation
Mrs. Marlene Korna, Metropolitan Area League of Women Voters
Bob O'Brien, Operating Engineers Union Local #49
Albert Ross, Amalgamated Transit Union
Charles Dayton, Minnesota Public Interest Research Group
Connie Hinitz, Minnesota Public Interest Research Group
Robert Thornburg, Minnesota Petroleum Council
John Hoene, Minnesota Asphalt Pavement Association
Bill Peterson, Coalition Opposing the Freeway
Lawrence McCabe, Commissioner of Aeronautics
Doug Kelm, Chairman of Metropolitan Transit Commission
Gene Avery, Metropolitan Council
F. C. Marshall, Minnesota Highway Department
Orvin Olson, Department of Economic Development

March 24, 1972, Duluth

Lloyd Shannon, St. Louis County Commissioner
State Senator Ralph Doty, Duluth
Carl Sivertson, St. Cloud County Engineer
Richard Wiman, Sierra Club
Charles Nickerson, St. Louis County Township Officers Assn.
Dorothy Nelson, Duluth
State Senator Florian Chmielewski, Sturgeon Lake
Dennis Johnson, Minnesota Highway Department
Edwin Hoff, St. Louis County Commissioner
Howard Patrick, Traffic Committee Studying Freeway, Two Harbors
Gwen Carlson, Duluth
Ken Paulson, County Engineers Legislative Committee
Herbert Evers, Oil Dealers of Carlton County

April 7, 1972, Marshall

Glenn Olson, Marshall
Lew Hudson, Highway 60 Action Committee, Worthington
Lyal George, Jackson Chamber of Commerce
James J. Wychor, Worthington Industries, Inc.
Norman Larson, Worthington
Jim Archbold, Marshall
George Abrahamson, President, Marshall City Council
Jim Miller, Cottonwood County Board
Harry Peterson, Madison
Robert Cudd, Clara City
Bob O'Brien, International Union of Operating Engineers, Local 49
Jim Ayers, Marshall Messenger

April 21, 1972, Rochester

Richard Spavin, Rochester Chamber of Commerce
Kenneth S. Umbehocker, Rochester Chamber of Commerce
Robert Pecore, Steele County Engineer

Elmer Morris, Goodhue County Engineer
Philip S. Duff, Jr., Red Wing Republican Eagle
State Senator Roger Laufenberger, Lewiston
E. F. Melody, Fairmont Chamber of Commerce
Ray Warden, Martin County Commissioner
George Cavers, Martin County Commissioner
George Jones, Fairmont City Council
Robert Peringer, Operating Engineers Local #49
Paul Hedberg, Blue Earth
John Patten, Mayor of Blue Earth
Paul Beyer, Faribault County Commissioner
Joe Dupont, Freeborn County Engineer
State Representative Dick Lempke, Wabash and Winona Counties
State Representative Victor Schultz, Goodhue

April 28, 1972, St. Cloud

Ralph Stock, Litchfield City Council
State Representative Bernard Brinkman, Richmond
Bruce Coddington, Litchfield Chamber of Commerce
William Radzwill, Dassel
M. C. Johnson, Mayor of Cokato
L. P. Ahles, Stearns County Highway Engineer
State Representative Jack Kleinbaum, St. Cloud
Don Volmuth, St. Cloud Chamber of Commerce
State Representative Howard Smith, Crosby
Dave Wilson, St. Cloud
Ouris Pattison, Willmar Opportunities
Ray E. Pederson, Mayor of Willmar
Duane E. Rumney, Willmar
Marvin Beach, Willmar Chamber of Commerce
Elroy Angus, Kandiyohi County Engineer
Al Mueller, Highway 15 Action Committee
H. P. Suedback, Brown County Engineer
Joe Gracyzak, Hillman
John McQuoid, Little Falls
Douglas Henschell, Mayor of Milaca

May 4, 1972, Moorhead

Wendell Huber, Minnesota Good Roads
Robert Anderson, Vikingland U.S.A. Inc.
State Representative Willis Eken, Twin Valley
Ted Cornelious, Bemidji Chamber of Commerce
Leonard Dickenson, Bemidji
Ernest Tell, Beltrami County Commissioner
State Senator Kenneth Wolfe, St. Louis Park
J. E. Rustad, Douglas County Commissioner
Vernon Korzendorfer, Becker County Engineer
Mrs. Roger Sipson, Moorhead
Virgil Tonsfeldt, Clay County Commissioner
Conrad Johnson, Barnsville Mayor
Dave Veldi, Moorhead

May 6, 1972, Minneapolis

Congressman Donald Fraser, Minneapolis
State Representative Tom Berg, Minneapolis
Warren Ibele, Metropolitan Transit Commission
Loren J. Simer, Minneapolis
Dr. Rodney G. Loper, University District Improvement Assoc.
Bob Patterson, Sierra Club
Mrs. Connie Barry, Concerned Citizens of East Bloomington
Tom Alberts, MECCA Youth Action Board
Mark Sullivan, Prior Lake
Peter Benzian, Minnesota Public Interest Research Group

May 12, 1972, St. Paul

John G. Oline, Minnesota Pollution Control Agency
Gary Silberstein, Sierra Club
Edward E. Slettom, Minnesota Association of Cooperatives
Mrs. Naomi Loper, League of Women Voters of Minneapolis
Dean Lund, League of Minnesota Municipalities
Ralph Keyes, Association of Minnesota Counties
Marcia Townley, Greater Metropolitan Federation
Abe Rosenthal, Metropolitan Transfermans Association, Inc.
Bob Berman, American Institute of Planners
Herbert Hoble, Minneapolis
Frank Burke, Longfellow Residents and Property Owners Organization, Inc.
Leo Borkowski, Winona County Commissioner
State Senator Roger Laufenburger, Winona County

June 15, 1972, St. Paul

State Representative Ernest Lindstrom
Gordon Moe, Minneapolis Assessor
F. C. Marshall, Assistant Commissioner of Highways
David Rademacher, Department of Economic Development
Arthur Roemer, Commissioner of Taxation
W. R. Salmi, Superintendent of Schools, Proctor

June 29, 1972, St. Paul

Gordon Forbes, Minnesota Railroads Association
Richard Freeman, Chicago and Northwestern Railroad Company
W. R. Allen, Burlington Northern Railroad Company
Harold Hoelscher, Land O' Lakes, Inc.
Curtiss E. Crippen, Chicago, Milwaukee, St.Paul and Pacific Railroad
Ray Smith, Soo Line Railroad Company
J. Frank O'Grady, Duluth, Missabe and Iron Range Railway Company
Phillip Stringer, Chicago, Rock Island and Pacific Railway Company
David Boyer, Minneapolis Northfield and Southern Railway
Thomas Fearnell, Duluth, Winnipeg and Pacific Railway Company

REPORT OF

STRUCTURE AND FORM COMMITTEE

Judge James C. Otis, Chairman

Senator Jack Davies

Representative O. J. Heinitz

* * * * * * *

To

CONSTITUTIONAL STUDY COMMISSION

August 17, 1972

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Interlining	~~shall~~	=	deletion
Underlining	shall	=	new language
Slash	*shall*	=	for relocation
Script	*shall*	=	relocated matter

I N T R O D U C T I O N

The changes proposed in this report of the Structure and Form Committee seek to eliminate obsolete and inconsequential provisions from the Constitution, correct grammar and style defects, reorganize provisions into an order producing a coherent document and to do this without making any substantively consequential modification of today's Constitution.

These changes are recommended for submission to the voters in November 1974 as a single amendment offered with the following ballot question:

> "SHALL THE CONSTITUTION BE AMENDED IN ALL ITS ARTICLES FOR THE PURPOSE OF IMPROVING ITS CLARITY BY REMOVING OBSOLETE AND INCONSEQUENTIAL PROVISIONS, BY IMPROVING ITS ORGANIZATION AND BY CORRECTING GRAMMAR AND STYLE OF LANGUAGE, BUT WITHOUT MAKING ANY CONSEQUENTIAL CHANGES IN ITS LEGAL EFFECT?"

If any proposed change fails to meet the criteria of mere form revision please alert any member of the Committee.

* * * * *

ARTICLE I

Bill of Rights

GENERAL COMMENT: All changes involve style.

OBJECT OF GOVERNMENT. Section 1. Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform ~~such~~ government, whenever the public good may require ~~it~~.

RIGHTS AND PRIVILEGES. Sec. 2. No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the State otherwise then ~~the~~ as punishment ~~of~~ for a crime, ~~whereof~~ of which the party ~~shall have been duly~~ has been convicted.

LIBERTY OF THE PRESS. Sec. 3. The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right.

TRIAL BY JURY. Sec. 4. The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy. ~~but~~ A jury trial may be waived by the parties in all cases in the manner prescribed by law~~;~~. ~~and~~ The legislature may provide that the agreement of five-sixths of ~~any~~ a jury in ~~any~~ a civil action or proceeding, after not less than six ~~(6)~~ hours deliberation, ~~shall be~~ is a sufficient verdict ~~therein~~.

NO EXCESSIVE BAIL OR UNUSUAL PUNISHMENTS. Sec. 5. Excessive bail shall not be required, nor ~~shall~~ excessive fines ~~be~~ imposed~~;~~, nor ~~shall~~ cruel or unusual punishments ~~be~~ inflicted.

RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS. Sec. 6. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the county or district

wherein the crime ~~shall have been~~ was committed, which county or district shall have been previously ascertained by law. ~~and~~ The accused shall enjoy the right to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense.

DUE PROCESS; PROSECUTIONS; SECOND JEOPARDY; SELF-INCRIMINATION; BAIL; HABEAS CORPUS. Sec. 7. No person shall be held to answer for a criminal offense without due process of law, and no person ~~for the same offense~~ shall be put twice in jeopardy of punishment *for the same offense*, nor ~~shall~~ be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law. All persons ~~shall~~ before conviction *shall* be bailable by sufficient sureties. ~~except for capital offenses when the proof is evident or the presumption great; and~~ The privilege of the writ of habeas corpus shall not be suspended unless ~~when~~ *the public safety requires* it in case of rebellion or invasion. ~~the public safety may require~~.

REDRESS OF INJURIES OR WRONGS. Sec. 8. Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property or character, ~~he ought~~ to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws.

TREASON DEFINED. Sec. 9. Treason against the State ~~shall consist~~ consists only in levying war against the ~~same~~ State, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

RIGHT AGAINST UNREASONABLE SEARCHES. Sec. 10. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

PROHIBITS EX POST FACTO LAWS, OR LAWS IMPAIRING CONTRACTS. Sec. 11. No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts shall ~~ever~~ be passed, and no conviction shall work corruption of blood or forfeiture of estate.

IMPRISONMENT FOR DEBT; PROPERTY EXEMPTION. Sec. 12. No person shall be imprisoned for debt in this state, but ~~this shall not prevent~~ the legislature ~~from providing~~ may provide for imprisonment, or holding to bail, persons charged with fraud in contracting ~~said~~ a debt. A reasonable amount of property by law shall be exempt from seizure or sale for the payment of ~~any~~ a debt or liability. ~~The amount of such exemption shall be determined by law. [Provided, however, that~~ All property ~~so~~ exempted shall be liable to seizure and sale for ~~any~~ debts incurred to any person for work done or materials furnished in the construction, repair or improvement of the ~~same and provided further, that such liability to seizure and sale shall also extend to all real property~~ and for any debt ~~incurred~~ to any laborer or servant for labor or service performed~~.]~~ thereon.

PRIVATE PROPERTY FOR PUBLIC USE. Sec. 13. Private property shall not be taken, destroyed or damaged for public use without just compensation therefor , first paid or secured.

MILITARY POWER SUBORDINATE. Sec. 14. The military shall be subordinate to the civil power, and no standing army shall be ~~kept up~~ maintained in this State in times of peace.

LANDS DECLARED ALLODIAL; LEASES, WHEN VOID. Sec. 15 All lands within the State are ~~declared to be~~ allodial, and feudal tenures of every description, with all their incidents, are prohibited. Leases and grants of agricultural lands for a longer period than twenty-one years ~~hereafter made, in which shall be reserved any~~ reserving rent or service of any kind, shall be void.

FREEDOM OF CONSCIENCE; NO PREFERENCE TO BE GIVEN TO ANY RELIGIOUS ESTABLISHMENT OR MODE OF WORSHIP. Sec. 16. The enumeration of rights in this constitution shall not ~~be construed to~~ deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State, nor shall any money be drawn from the treasury for the benefit of any religious societies, or religious or theological seminaries.

NO RELIGIOUS TEST OR PROPERTY QUALIFICATIONS TO BE REQUIRED. Sec. 17. No religious test or amount of property shall ~~ever~~ be required as a qualification for any office of public trust under the State. No religious test or amount of property shall ~~ever~~ be required as a qualification of any voter at any election in this State; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion.

~~NO LICENSE TO PEDDLE. Sec. 18. Any person who shall peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor.~~

COMMENT: Moved to Art.XIII Sec.7.

ARTICLE II

Name and Boundaries

ACCEPTANCE OF PROPOSITIONS IN ENABLING ACT. Sec. ~~3~~ 1. The propositions contained in the act of Congress entitled, "An act to authorize the people of the Territory of Minnesota to form a constitution and state government, preparatory to their admission into the Union on equal footing with the original states" are hereby accepted, ratified and confirmed, and shall remain irrevocable without the consent of the United States; ~~and it is hereby ordained that this State shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations Congress may find necessary for securing the title to said soil to bona fide purchasers thereof; and no tax shall be imposed on lands belonging to the United States and in no case shall non-resident proprietors be taxed higher than residents.~~

COMMENT: Moved from Article II Sec.3. The matters deleted are protected by federal constitutional laws.

NAME AND BOUNDARIES. Section ~~1~~ 2. This State shall be called ~~and known by the name of~~ the State of Minnesota, and shall ~~consist of and~~ have jurisdiction over the territory embraced *in the act of Congress entitled, "An act to authorize the people of the Territory of Minnesota to form a constitution and state government, preparatory to their admission into the Union on equal footing with the original states".* ~~in the following boundaries, to wit: Beginning at the point in the center of the main channel of the Red River of the North, where the boundary line between the United States and British Possessions crosses the same; thence up the main channel of said river to that of the Bois des Sioux river; thence up the main channel of said river to Lake Traverse, thence up the center of said lake to the southern extremity thereof; thence in a direct line to the head of Big Stone lake; thence through its center to its outlet; thence by a due south line to the north line of the State of Iowa; thence east along the northern boundary of said State to the main channel of the Mississippi river; thence up the main channel of said river and following the boundary line of the State of Wisconsin until the same intersects the St. Louis river; thence down the said river to and through Lake Superior, on the boundary line of Wisconsin and Michigan, until it intersects the dividing line between the United States and British Possessions; thence up Pigeon river and following said dividing line to the place of beginning.~~

COMMENT: Establishing boundaries by cross reference shortens the constitution.

JURISDICTION ON BORDERING RIVERS. Sec. ~~2~~ 3. The State of Minnesota ~~shall have~~ has concurrent jurisdiction ~~on the Mississippi and on~~ all ~~other~~ rivers and waters ~~bordering on the said State of Minnesota, so far as the same shall form~~ forming a common boundary ~~to said State, and~~ with any other state or states. ~~now or hereafter to be formed by the same; and said rivers and waters, and~~ Navigable waters ~~leading into the same,~~ shall be common highways and forever free ~~as well to the inhabitants of said State as~~ to ~~other~~ citizens of the United States, without any tax, duty, impost, or toll therefor.

COMMENT: Unnecessary words are stricken.

ARTICLE III

Distribution of the Powers of Government

GENERAL COMMENT: No change.

DIVISION OF POWERS. Section 1. The powers of government shall be divided into three distinct departments-legislative, executive, and judicial; and no person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others, except in the instances expressly provided in this constitution.

ARTICLE IV

Legislative Department

GENERAL COMMENT: This article is substantially rearranged. Sections 1 to 12 will now relate to the institution and its members. Sections 13 to 25 will relate to legislative procedure.

~~Legislature/members/biennial/session./~~ HOUSE AND SENATE. Section 1. The legislature ~~shall~~ consists of the Senate and House of Representatives. ~~The/senate/shall/be/composed/of/members/elected/for/a/term/of/four/years/and/the/house/of/representatives/shall/be/composed/of/members/elected/for/a/term/of/two/years/by/the/qualified/voters/at/the/general/election./~~

~~The/legislature/shall/meet/at/the/seat/of/government/in/regular/session/in/each/odd/numbered/year/at/the/time/prescribed/by/law/for/a/term/not/exceeding/120/legislative/days./~~

~~A/special/session/of/the/legislature/may/be/called/as/otherwise/provided/by/the/constitution./~~

COMMENT: Most of old Section 1 is deleted.

APPORTIONMENT OF MEMBERS. Sec. 2. The number of members who compose the Senate and House of Representatives and the bounds of districts shall be prescribed by law. ~~but the representation in the Senate shall never exceed one member for every 5,000 inhabitants, and in the House of Representatives one member for every 2,000 inhabitants.~~ The representation in both houses shall be apportioned equally throughout the different sections of the state, in proportion to the population thereof.

COMMENT: Stricken language is obsolete.

~~Census enumeration~~ APPORTIONMENT. Sec. ~~23~~ 3. ~~The legislature shall have the power to provide by law for an enumeration of the inhabitants of this State, and also have the power~~ At the its first session after each enumeration of the inhabitants of ~~this~~ state made by the authority of the United States, ~~to~~ the legislature shall prescribe the bounds of congressional, ~~senatorial and representative~~ districts, and ~~to~~ apportion anew the senators and representatives. ~~among the several districts according to the provisions of section second of this article. Senatorial districts; term of office of senators and representatives.--Sec. 24.~~ The Senators shall be chosen by single districts of convenient contiguous territory. ~~at the same time that members of the house of representatives are required to be chosen, and in the same manner; and~~ No representative district shall be divided in the formation of a senate district. The senate districts shall be numbered in a regular series. ~~The terms of office of senators and representatives shall be the same as now prescribed by law until the general election of the year one thousand eight hundred and seventy eight (1878), at which time there shall be an entire new election of all senators and representatives.~~

COMMENT: Stricken language is unnecessary or obsolete.

TERMS OF OFFICE. Sec. 4. Representatives ~~chosen at such election, or at any election thereafter,~~ shall hold ~~their~~ office for ~~the~~ a term of two years, except ~~it be~~ to fill a vacancy~~;~~ .~~and the senators chosen at such election by districts designated as odd numbers shall go out of office at the expiration of the second year, and senators chosen by districts designated by even numbers shall go out of office at the expiration of the fourth year; and thereafter~~ Senators shall be hold office ~~chosen~~ for a term of four years, except to fill a vacancy and except there shall be an entire new election of all the senators at the election of representatives next succeeding each new apportionment provided for in this article. ~~Vacancies in legislature. Sec. 17.~~ *The governor shall issue writs of election to fill such vacancies* ~~as may occur, by resignation or any other cause,~~ in either house of the legislature. ~~The legislature shall prescribe by law the manner in which evidence in cases of contested seats in either house shall be taken.~~
(Formerly part of Article IV Sec. 17)

COMMENT: All provisions relating to legislative terms are combined in this section and other subject matter is relocated.

RESTRICTION AS TO HOLDING OFFICE. Sec. ~~9~~ 5. No senator or representative shall hold any other office under the authority of the United States or the State of Minnesota, except that of postmaster or of notary public. If elected or appointed to another office, a legislator may resign from the legislature by tendering his resignation to the governor.

COMMENT: No change from old section 9.

QUALIFICATION OF LEGISLATORS. Sec. ~~25~~ 6. Senators and representatives shall be qualified voters of the State, and shall have resided one year in the State and six months immediately preceding the election in the district from which ~~they are~~ elected. ~~Eligibility of members; quorum. Sec. 3.~~ Each house shall be the judge of the election returns and eligibility of its own members. *The legislature shall prescribe by law the manner in which for taking evidence in cases of contested seats in either house.* ~~shall be taken.~~ (Formerly part of Article IV Sec. 17)

COMMENT: All provisions relating to qualifications of legislators and challenges to the seating of legislators are combined in this section.

RULES OF GOVERNMENT. Sec. 7. Each house may determine the rules of its proceedings, sit upon its own adjournment, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member; but no member shall be expelled the second time for the same offense.

COMMENT: No change from old Section 4.

OATH OF OFFICE. Sec. ~~29~~ 8. All members and officers ~~of both branches~~ of the legislature ~~shall~~ before entering upon the duties of their respective trusts, *shall* take and subscribe an oath or affirmation to support the Constitution of the United States, the Constitution of ~~the~~ this State ~~of Minnesota,~~ and faithfully ~~and impartially to~~ discharge the duties of his office to the best of his judgment and ability. ~~devolving upon him as such member or officer.~~

COMMENT: Changed so as to parallel language of Art.V Sec.6.

COMPENSATION. Sec.~~7~~ 9. The compensation of senators and representatives shall be prescribed by law. ~~But~~ No increase of compensation shall ~~be prescribed which shall~~ take effect during the period for which the members of the existing House of Representatives ~~may~~ have been elected.

COMMENT: Style.

PRIVILEGE FROM ARREST. Sec. ~~8~~ 10. The members of each house ~~shall~~ in all cases, except treason, felony, and breach of the peace, shall be privileged from arrest during the session of their respective houses, and in going to or returning from the same. For any speech or debate in either house they shall not be questioned in any other place.

COMMENT: Style.

PROTEST AND DISSENT OF MEMBERS. Sec. ~~10~~ 11. Two or more members of either house ~~shall have liberty to~~ may dissent and protest against any act or resolution which they may think injurious to the public or to any individual, and have the reason of their dissent entered on the journal.

COMMENT: Style.

Alternative A-(if flexible session amendment is not ratified)

LEGISLATURE MEETS BIENNIALLY; LENGTH OF SESSION. Sec.~~1~~ 12. *The legislature shall meet at the seat of government in regular session in each odd numbered year at the time prescribed by law for a term not exceeding 120 legislative days/~~and no new bill shall be introduced in either branch except upon the written request of the Governor during the last 30 days of such session~~.* A *special session of the legislature may be called* by the governor ~~as otherwise provided by the constitution~~. (Formerly Art.IV,Sec.1)

~~Length of adjournments.--Sec.6~~ Neither house shall, during a session of the legislature, adjourn for more than three days (Sundays excepted), nor to any other place than that in which the two houses shall be assembled, without the consent of the other house.

Alternative B-(if flexible session amendment is ratified)

LEGISLATURE MEETS BIENNIALLY; LENGTH OF SESSION. Sec.~~1~~ 12. *The legislature shall meet at the seat of government in regular session in each biennium at the times prescribed by law for not exceeding a total of 120 legislative days. The legislature shall not meet in regular session, nor in any adjournment thereof, after the first Monday following the third Saturday in May of any year. After meeting at a time prescribed by law, the legislature may adjourn to another time. "Legislative day" shall be defined by law.* A *special session of the legislature may be called* by the governor ~~as otherwise provided by the constitution~~. (Formerly Art.IV, Sec.1)

~~Length of adjournments.--Sec.6.~~ Neither house shall, during a session of the legislature, adjourn for more than three days (Sundays excepted), nor to any other place than that in which the two houses shall be assembled, without the consent of the other house.

COMMENT: All provisions relating to time of meeting are combined in this section. They are drawn from old Sec.1 and Sec.6. Alternative A is appropriate if the flexible session amendment is not ratified; B, if it is.

EXIGIBILITY OF MEMBERS; QUORUM. Sec.~~3~~ 13. *Each house shall be the judge of the elections, returns and eligibility of its members;* ~~a~~A majority of each house ~~shall~~ constitutes a quorum to transact business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in ~~such~~ the manner and under ~~such~~ the penalties ~~as~~ it may provide.

COMMENT: First sentence is relocated in Sec.6 relating to qualifications and challenges.

OPEN SESSIONS. Sec. ~~19~~ 14 Each house shall be open to the public during ~~the~~ its sessions ~~thereof~~, except in such cases as in ~~their~~ its opinion ~~may~~ require secrecy.

COMMENT: Style.

OFFICERS; JOURNAL OF PROCEEDINGS. Sec. ~~5~~ 15. The House of Representatives shall elect its presiding officer and the Senate and House of Representatives shall elect such other officers as may be provided by law; they shall keep journals of their proceedings, and from time to time publish the same, and the yeas and nays, when taken on any question, shall be entered on ~~such~~ the journals.

COMMENT: Style.

ELECTIONS VIVA VOCE. Sec. ~~30~~ 16. In all elections ~~to be made~~ by the legislature, ~~the~~ members ~~thereof~~ shall vote viva voce, and their votes shall be entered on the journal.

COMMENT: Style.

LAWS TO EMBRACE ONLY ONE SUBJECT. Sec. ~~27~~ 17. No law shall embrace more than one subject, which shall be expressed in its title.

COMMENT: No change in old section 27.

BILLS OF REVENUE TO ORIGINATE IN HOUSE. Sec. ~~10~~ 18. All bills for raising a revenue shall originate in the House of Representatives, but the Senate may propose ~~and concur with the~~ amendments as on other bills.

COMMENT: Style.

READING OF BILLS. Sec. ~~20~~ 19. Every bill shall be read on three different days in each ~~seperate~~ house, unless, in case of urgency, two-thirds of the house where ~~such~~ the bill is pending ~~shall~~ deem it expedient to dispense with this rule. ~~and no~~ A bill shall not be passed by either house until it ~~shall have~~ has been ~~previously~~ read twice at length.

COMMENT: Style.

ENROLLMENT OF BILLS. Sec. ~~21~~ 20. Every bill having passed by both houses shall be ~~carefully~~ enrolled and ~~shall be~~ signed by the presiding officer of each house. Any presiding officer refusing to sign a bill ~~which shall have previously~~ passed by both houses shall thereafter be ~~incapable of holding a seat in either branch of the legislature, or hold any other~~ disqualified from any office of honor or profit in the State. ~~and in case of such refusal.~~ Each house ~~shall~~, by rule, shall provide the manner in which ~~such~~ a bill shall be ~~properly~~ certified for presentation to the governor in case of such refusal.

COMMENT: Style.

Alternative A - (If flexible session ~~amendment is~~ not ratified)

PASSAGE OF BILLS ON LAST DAY OF SESSION PROHIBITED. Sec.~~22~~ 21. No bill shall be passed by either house ~~of the legislature~~ upon the day prescribed for the adjournment of a regular session ~~the two houses~~. ~~But~~ This section ~~shall not be so construed as to~~ does not preclude the enrollment of a bill or ~~the signature and~~ passage transmittal from one house to the other~~, or the reports thereon from committees,~~ or ~~its transmission~~ to the executive for his signature. *No new bill shall be introduced in either house branch ~~except on the written request of the governor~~ during the last 30 days preceding the day prescribed for adjournment of such a regular sessions except on the written request of the governor.*

(Slashed material formerly part of Article IV, Sec.1)

Alternative B - (If flexible session ~~amendment~~ is ratified)

PASSAGE OF BILLS ON LAST DAY OF SESSION PROHIBITED. Sec.~~22~~ 21. No bill shall be passed by either house ~~of the legislature~~ upon the day prescribed for the adjournment of the ~~two houses~~ session in any year. ~~But~~ This section ~~shall not be so construed as to~~ does not preclude the enrollment of a bill or ~~the signature,~~ and ~~passage~~ transmittal from one house to the other~~, or the reports thereon from committees,~~ or ~~its transmission~~ to the executive for his signature.

COMMENT: Alternative A is appropriate if the flexible session amendment of 1972 is not ratified. Alternative B is appropriate if that amendment is ratified. Changes are style. Last sentence of Alternative A would be relocated from old section 1 and is repealed by flexible session amendment.

MAJORITY VOTE OF ALL MEMBERS-ELECT TO PASS A LAW. Sec. ~~13~~ 22. The style of all laws of this State shall be: "Be it enacted by the Legislature of the State of Minnesota." No law shall be passed unless voted for by a majority of all the members elected to each ~~branch~~ house of the legislature, and the vote entered upon the journal of each house.

COMMENT: Style.

APPROVAL OF BILLS BY GOVERNOR; ACTION ON NON-APPROVAL. Sec. ~~11~~ 23. Every bill ~~which shall have~~ passed ~~the Senate and House of Representatives,~~ in conformity to the rules of each house and the joint rules of the two houses, shall ~~before it becomes a law,~~ be presented to the governor ~~of the state~~. If he approves, he shall sign it, deposit it in the office of secretary of state ~~for preservation~~ and notify the house ~~where~~ in which it originated of ~~the~~ that fact. ~~But if not,~~ If he disapproves, he shall return it, with his objections to the house in which it ~~shall have~~ originated, ~~when such~~ His objections shall be entered ~~at large~~ on the journal. ~~of the same, and the house shall proceed to reconsider the bill~~. If, after ~~such~~ reconsideration, two-thirds of that house ~~shall~~ agree to pass the bill, it shall be sent, together with the Governor's objections, to the other house, ~~by~~ which ~~it~~ shall likewise be ~~reconsidered~~ it ~~and~~ If ~~it be~~ approved by two-thirds of that house it ~~shall~~ becomes a law and shall be deposited in the office of the Secretary of State. ~~But~~ In ~~all~~ such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each house ~~respectively~~. ~~If~~ Any bill ~~shall~~ not ~~be~~ returned by the governor within three days (Sundays excepted) after it ~~shall have been~~ is presented to him, ~~the same shall be~~ becomes a law ~~in like manner~~ as if he had signed it, unless the legislature, by adjournment* within that time, prevents its return. ~~Bills~~ Any bill passed during the last three days of a session* may be presented to the governor during the three days following the day of ~~the~~ final adjournment ~~of~~ and becomes law if ~~the legislature and the legislature may prescribe the method of performing the acts necessary to present bills to the governor after adjournment. T~~the governor ~~may approve,~~ signs and ~~file~~ deposits it in the office of the secretary of state within 14 days after the adjournment of the legislature* ~~any act passed during the last three days of the session, and the same shall become a law.~~ ~~If~~ Any bill passed during the last three days of the session* ~~is~~ which is not signed and deposited within 14 days after ~~the~~ adjournment, ~~it shall~~ does not become a law.

* The phrase "in any year" or "for that year" should be added where asterisks appear if the flexible session amendment of 1972 is ratified.

If ~~any~~ a bill presented to the governor contains several items of appropriation of money, he may ~~object to~~ disapprove one or more of ~~such~~ the items, while approving ~~of the other portion of~~ the bill. ~~In such case he shall append to the bill,~~ At the time ~~of signing it~~ he signs the bill the governor shall append to it a statement of the items he disapproves and the disapproved items ~~to which he objects, and the appropriation so objected to~~ shall not take effect. If the legislature be is in session, he shall transmit to the house in which the bill originated a copy of ~~such~~ the statement, and the items ~~objected to~~ disapproved shall be seperately reconsidered. If, on reconsideration, one or more of ~~such~~ the items be are approved by two-thirds of the members elected to each house, ~~the same~~ they shall be a part of the law, notwithstanding the objections of the governor. ~~All the provisions of this section, in relation to bills not approved by the governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.~~

COMMENT: Changes are largely stylistic, but do seek to clarify somewhat the veto procedure.

~~Money appropriations; how made;~~ DISAPPROVAL OF RESOLUTIONS. Sec. ~~12~~ 24. ~~No money shall be appropriated except~~ Every order, resolution or vote requiring the concurrence of the two houses, ~~(~~except such as relate to the business or adjournment of the ~~same)~~ legislature, shall be presented to the governor ~~for his signature, and, before the same shall take effect, shall be approved by him, or, being returned by him with his objections, shall be repassed by two thirds of the members of the two houses, according to the rules and limitations~~ and is subject to his disapproval as prescribed in case of a bill.

COMMENT: First sentence is relocated in Article XI section 1. Other changes are style.

PUNISHMENT FOR DISORDERLY CONDUCT. Sec. ~~18~~ 25. *During ~~its~~ a session* each house may punish by imprisonment for not to exceed twenty-four hours ~~during its session~~, any person not a member who ~~shall be~~ is guilty of any disorderly or contemptuous behavior in ~~their~~ its presence ~~but no such imprisonment shall at any time exceed twenty four hours~~.

COMMENT: Style.

DISPOSITION OF OTHER SECTIONS OF ARTICLE IV

Sec. 14	Art. VIII Sec.1
Sec. 15	Encompassed by Art. VII Sec. 1 and 6
Sec. 28	Inserted in Art. XII Sec. 1
Sec. 31	Art. XIII Sec. 5
Sec. 32(a)	Art. X Sec. 2
Sec. 32(b)	Art. XI Sec. 8
Sec. 33	Art. XII Sec. 1
Sec. 34	Obsolete
Sec. 35	Art. XIII Sec. 6

ARTICLE V

Executive Department

OFFICERS IN EXECUTIVE DEPARTMENT. Section 1. The executive department ~~shall~~ consists of a governor, lieutenant governor, secretary of state, auditor, treasurer and attorney general, who shall be chosen by the electors of the State.

COMMENT: Style.

(Sec. 2 moved to Art.VII Sec.8)

OFFICIAL TERM OF GOVERNOR AND LIEUTENANT GOVERNOR; QUALIFICATIONS. Sec. ~~3~~ 2. The terms ~~of office~~ for the Governor and Lieutenant Governor ~~shall be~~ are four years, and until ~~their~~ a successors ~~are~~ is chosen and qualified. Each shall have attained the age of 25 years, ~~and~~ shall have been a bona fide resident of the state for one year next preceding his election, ~~Both~~ and shall be a citizens of the United States.

COMMENT: Style.

POWERS AND DUTIES OF GOVERNOR. Sec. 4 3. The governor shall communicate by message to each session of the legislature the ~~such~~ information touching the state and ~~condition of the~~ country as he ~~may~~ deems expedient. ~~He shall be~~ is commander-in-chief of the military and naval forces, and may call them out ~~such forces~~ to execute the laws, suppress insurrection and repel invasion. He may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices; ~~and he shall have power in condition with the board of pardons, of which the governor shall be ex officio a member, and the other members of which shall consist of the attorney general of the State of Minnesota, and the chief justice of the supreme court of the State of Minnesota, and whose powers and duties shall be defined and regulated by law, to grant reprieves and pardons after conviction for offenses against the State, except in cases of impeachment. He shall have power,~~ ~~by and~~ With the advice and consent of the Senate, ~~to~~ he may appoint notaries public, and ~~such~~ other officers as may be provided by law. He ~~shall have power to~~ may appoint commissioners to take the acknowledgment of deeds or other instruments in writing, to be used in the State. ~~He shall have a negative upon all laws passed by the legislature, under such rules and limitations as are in this Constitution prescribed. He may on extraordinary occasions convene both houses of the legislature.~~ He shall take care that the laws be faithfully executed, fill any vacancy that may occur in the offices of the secretary of state, treasurer, auditor, attorney general, and ~~such~~ the other state and district offices ~~as may be~~ hereafter created by law, until the end of the term for which the person who had vacated the office was elected, or the first Monday in January following the next general election, whichever is sooner, and until their successors are chosen and qualified.

COMMENT: Pardon Board material (slashed) is moved to a new Section 7. Veto power is provided for in Article IV Sec.23, so reference here is eliminated.

OFFICIAL TERM OF OTHER EXECUTIVE OFFICERS. Sec. ~~5~~ 4. The ~~official~~ terms of the secretary of state, treasurer, attorney general, and state auditor ~~shall be~~ are four years, and ~~each shall continue in office~~ until ~~his~~ a successor ~~shall have been~~ is chosen ~~elected~~ and qualified. The ~~further~~ duties and salaries of the executive officers shall ~~each~~ be prescribed by law.

COMMENT: Style.

DUTIES OF LIEUTENANT GOVERNOR AND SUCCESSION TO OFFICE OF GOVERNOR DURING EMERGENCY. Sec. ~~6~~ 5. The Lieutenant Governor shall be ex officio president of the Senate; and in case a vacancy should occur, from any cause whatever, in the office of Governor, he shall be Governor during such vacancy. The compensation of Lieutenant Governor shall be double the compensation of a State Senator. Before the close of each session of the Senate they shall elect a president pro tempore, who shall be Lieutenant Governor in case a vacancy should occur in that office. In case the Governor shall be unable to discharge the powers and duties of his office, the same shall devolve on the Lieutenant Governor. The legislature may by law provide for the case of the removal, death, resignation, or inability both of the Governor and Lieutenant Governor to discharge the duties of Governor and may provide by law for continuity of government in periods of emergency resulting from disasters caused by enemy attack in this state, including but not limited to, succession to the powers and duties of public office and change of the seat of government.

COMMENT: Substantial amendment to this section is proposed for ratification in 1972. Style changes should be considered after that amendment has been rejected or ratified.

~~TERMS OF FIRST STATE OFFICERS. Sec. 7.~~ (See Report of Obsolete Provisions)

OATH OF OFFICE TO BE TAKEN BY STATE OFFICERS. Sec. ~~8~~ 6. Each officer created by this article ~~shall~~, before entering upon his duties, shall take and subscribe an oath or affirmation to support the Constitution of the United States and of this State, and faithfully discharge the duties of his office to the best of his judgment and ability.

COMMENT: Changed to parallel Article IV Section 8.

PARDON BOARD. Sec. 7. *The governor, the attorney general and the chief justice of the supreme court constitute a board of pardons. Its powers and duties shall be defined and regulated by law. The governor, in conjunction with the board of pardons, has power to grant reprieves and pardons after conviction for an offense against the state, except in cases of impeachment.* (Formerly included in Art.V Sec.4)

COMMENT: Extracted from Section 3 (Old Section 4)

ARTICLE VI

Judiciary

NO CHANGES RECOMMENDED AT THIS TIME BECAUSE OF

AMENDMENT PROPOSED FOR RATIFICATION NOVEMBER 7, 1972.

ARTICLE VII

Elective Franchise

ELECTIVE FRANCHISE. Section 1. Every person of the age of ~~19~~ 18 years or more who has been a citizen of the United States for three months and who has resided in this state six months and in the precinct for thirty days next preceding an election shall be entitled to vote in that precinct.~~and~~ The place of voting by one otherwise qualified who has changed his residence within thirty days preceding the election ~~may~~ shall be prescribed by law. ~~Non-Eligible.--Sec.2.~~ ~~No~~ A person not ~~belonging to one of the classes specified in the preceding section~~ meeting the above requirements; ~~no~~ a person who has been convicted of treason or ~~any~~ felony, unless restored to civil rights; and ~~no~~ a person under guardianship, or who ~~may be~~ is non compos mentis or insane, shall not be entitled or permitted to vote at any election in this State.

COMMENT: Change of age from 19 to 18 years accords with the federal constitution. Combining Sections 1 and 2 and other changes are stylistic.

RESIDENCE NOT LOST IN CERTAIN CASES. Sec. ~~3~~ 2. For the purpose of voting, no person ~~shall be deemed to have lost~~ a loses residence solely by reason of his absence while employed in the service of the United States; nor while engaged upon the waters of this State or of the United States; nor while a student in any seminary of learning; nor while kept at any almshouse or asylum; nor while confined in any public prison. ~~Soldiers and sailers; restriction.--Sec.4.~~ No soldier, seaman or marine in the army or navy of the United States ~~shall be deemed~~ is a resident of this State solely in consequence of being stationed within the ~~same~~ state.

COMMENT: Style.

UNIFORM OATH AT ELECTIONS. SEC. 3. The legislature shall provide for a uniform oath or affirmation to be administered at elections, and no person shall be compelled to take any other or different form of oath to entitle him to vote. (Formerly Art.XV Sec.3)

COMMENT: Relocated from "Miscellaneous Provisions" article.

CIVIL PROCESS SUSPENDED ON ELECTION DAY. Sec. ~~5~~ 4. During the day on which ~~any~~ an election ~~shall be~~ is held, no person shall be arrested by virtue of any civil process.

COMMENT: Style.

ELECTIONS BY BALLOTS. Sec. ~~6~~ 5. All elections shall be by ballot, except for such town officers as may be directed by law to be otherwise chosen.

COMMENT: No change in old Section 6.

RIGHT TO HOLD OFFICE. Sec.~~7~~ 6. Every person who by the provisions of this article ~~shall be~~ is entitled to vote at any election and is twenty-one years of age ~~shall be~~ is eligible for to any office ~~which now is, or hereafter shall be,~~ elective by the people in the district wherein he ~~shall have~~ has resided thirty days previous to such the election, ~~except as~~ otherwise provided in this Constitution, or the Constitution and law of the United States.

COMMENT: Style.

OFFICIAL YEAR OF THE STATE. Sec. ~~9~~ 7. The official year for the State of Minnesota ~~shall~~ commences on the first Monday in January in each year, and all terms of office ~~shall~~ terminate at that time~~;~~ ~~and~~. The general election shall be held on the first Tuesday after the first Monday in November. The general election shall be held biennially in each even numbered year.

COMMENT: Style.

ELECTION RETURNS TO BE SENT TO SECRETARY OF STATE. Sec.~~2~~ 8. The returns of every election for ~~the officers named in the foregoing section~~ officeholders elected statewide shall be made to the secretary of state, who shall call to his assistance two or more of the judges of the supreme court and two disinterested judges of the district courts of the State, who shall constitute a board of canvassers, who shall open and canvass ~~said~~the returns and declare the result within three days after such the canvass. (Formerly Art.V Sec.2)

COMMENT: Changed to accord with practice of submitting supreme court justice election returns to state canvassing board. Also relocated in election article instead of executive article.

ARTICLE ~~XIII~~ VIII

Impeachment and Removal From Office

IMPEACHMENT POWERS. Section ~~14~~ 1. *The House of Representatives shall have has the sole power of impeachment, through a concurrence of a majority of all the members elected to seats therein. All impeachments shall be tried by the Senate; and When sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the members present.* (Formerly Art.IV Sec.14)

IMPEACHMENT AND REMOVAL FROM OFFICE. Sec. ~~1~~ 2. The governor, secretary of state, treasurer, auditor, attorney general, and the judges of the supreme and district courts, may be impeached for corrupt conduct in office, or for crimes and misdemeanors; but judgment in such case shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit in this State. The party convicted ~~thereof shall nevertheless be liable and~~ is subject to indictment, trial, judgment and punishment, according to law.

COMMENT: Style.

Sec. 3. No officer shall exercise the duties of his office after he ~~shall have~~ has been impeached and before his acquittal.

COMMENT: Style.

Sec. 4. On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court.

COMMENT. No change.

Sec. 5. No person shall be tried on impeachment before he ~~shall have~~ has been served with a copy thereof at least twenty days previous to the day set for trial.

COMMENT: Style.

Sec. ~~2~~ 6. The legislature of this State may provide for the removal of inferior officers from office, for malfeasance or nonfeasance in the performance of their duties.

COMMENT: Style.

ARTICLE ~~XIV~~ IX

Amendments to the Constitution

AMENDMENTS TO CONSTITUTION; MAJORITY VOTE OF ELECTORS VOTING MAKES AMENDMENT VALID. Section 1. ~~Whenever~~ A majority of ~~both houses~~ the members elected to each house of the legislature ~~shall deem it necessary to alter or amend this Constitution, they~~ may propose ~~such alterations or~~ amendments to this Constitution. ~~which~~ Proposed amendments shall be published with the laws ~~which have been~~ passed at the same session, and ~~said amendments shall be~~ submitted to the people for their approval or rejection at ~~any~~ a general election~~;~~ ~~and if it shall appear, in a manner to be provided by law, that~~ a If a majority of all the electors voting at ~~said~~ the election ~~shall have voted for and ratified such alterations or amendments, the same shall be valid to all intents and purposes as~~ vote to ratify an amendment, it becomes a part of this Constitution. If two or more alterations or amendments ~~shall be~~ are submitted at the same time, ~~it shall be so regulated that the~~ voters shall vote for or against each seperately.

COMMENT: Style.

REVISION OF CONSTITUTION. Sec.2. ~~Whenever~~ Two-thirds of the members elected to each ~~branch~~ house of the legislature ~~shall think it necessary to call a convention to revise this Constitution, they shall recommend~~ may submit to the electors ~~to vote~~ at the next general election ~~for members of the legislature~~ the question of calling a convention to revise this Constitution. ~~for or against a convention; and~~ If a majority of all electors voting at ~~said~~ the election ~~shall have voted~~ vote for a convention, the legislature shall, at ~~their~~ its next session, provide by law for calling the ~~same~~ convention. The convention shall consist of as many ~~members~~ delegates as there are members of the House of Representatives~~;~~ . ~~who~~ Delegates shall be chosen in the same manner~~;~~ as members of the House of Representatives and shall meet within three months after their election ~~for the purpose aforesaid~~. *Section 5 of Article IV of the Constitution shall* does *not apply to election to the convention.*

COMMENT: The last sentence permits legislators to serve as convention delegates and is simply moved from Section 3. Other changes are style.

SUBMISSION TO PEOPLE OF REVISED CONSTITUTION DRAFTED AT CONVENTION. Sec. 3. Any convention called to revise this constitution shall submit any revision ~~thereof by said convention~~ to the people of the State of Minnesota for ~~their~~ approval or rejection at the next general election held not less than 90 days after ~~the adoption~~ submission of ~~such~~ the revision~~,~~ ~~and,~~ If ~~it shall appear in the manner provided by law that~~ three-fifths of all the electors voting on the question ~~shall have voted for and ratified such~~ vote to ratify the revision, ~~the same~~ it shall constitute a new constitution of the State of Minnesota. ~~Without such submission and ratification, said revision shall be of no force or effect.~~ *Section 9 of Article IV of the Constitution does not apply to election to the convention.*

COMMENT: Style.

~~ARTICLE IX FINANCES OF THE STATE AND BANKS~~
~~AND BANKING~~

ARTICLE X

Taxation

GENERAL COMMENT: All provisions relating to taxation are brought together in this article.

POWER TO TAX. Section 1. The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes, but public burying grounds, public school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property and houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation except as provided in this section, and there may be exempted from taxation personal property not exceeding in value $200, for each household, individual or head of a family, and household goods and farm machinery, as the legislature may determine; provided, that the legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to a cash valuation. The legislature may by law define or limit the property exempt under this section, other than churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities and seminaries of learning.

COMMENT: No change.

CHANGE OF FORM OF TAXATION OF RAILROADS TO BE VOTED UPON. Sec. ~~3.~~ 2. Any law providing for the repeal or amendment of any law or laws heretofore or hereafter enacted, which provides that any railroad ~~company~~ companies now existing in this State or operating its road therein, or which may be hereafter organized, shall, in lieu of all other taxes and assessments upon their real estate, roads, rolling stock, and other personal property, at and during the time and periods therein specified, pay into the treasury of this State a certain percentage therein mentioned of the their gross earnings of such railroad companies now existing or hereafter organized, shall may be amended or repealed only by a law before the same shall take effect or be in force, be submitted to a vote of the people of the State, and be adopted and ratified by a majority of the electors of the State voting at the a general election at which the same shall be submitted to them. (Formerly Art.IV Sec.32(a))

COMMENT: Style.

FORESTATION AND REFORESTATION. Sec. ~~4~~ 3. ~~Laws may be~~ enacted for the purpose of encouraging and promoting To encourage and promote forestation and reforestation of lands in this state, whether owned by private persons or the public, laws may be enacted including the fixing in advance of a definite and limited annual tax on such lands for a term of years and imposing a yield tax at or after the end of such the term upon the timber and other forest products so grown. but The taxation of mineral deposits shall not be affected by this amendment section. (Formerly Art. XVIII, Sec. 1)

COMMENT: Style.

OCCUPATION TAX. Sec. ~~1A~~ 4. Every person, co-partnership, company, joint stock company, corporation, or association ~~however-or-for-whatever-purpose-organized,~~ engaged in the business of mining or producing iron ore or other ores in this State, shall pay to the State of Minnesota an occupation tax on the valuation of all ores mined or produced, which tax shall be in addition to all other taxes provided by law~~;~~. The ~~said~~ tax ~~to-be~~ is due ~~and payable-from-such-person,-co-partnership,-company,-joint-stock company,-corporation,-or-association-however-or-for-whatever purpose-organized,~~ on May first of the calendar year next following the mining or producing thereof. The valuation of ore for the purpose of determining the amount of tax to be paid shall be ascertained in the manner and method provided by law. Funds derived from the tax herein provided for shall be used as follows: 50 percent to the state general revenue fund, 40 percent for the support of elementary and secondary schools and ten percent for the general support of the university. ~~The-legislature-shall-by-law-make-the-necessary provisions-for-carrying-out-the-provisions-of-this-section.~~

COMMENT: Style.

AIRCRAFT FUEL. Sec. ~~3~~ 5. The state may levy a state excise tax upon any fluid or other means or instrumentalities, or the business of dealing in, selling, or producing any or all thereof, used in producing or generating power for propelling aircraft of any kind now known or hereafter invented, or for propelling or operating motor or other vehicles, or other equipment used for airport purposes and not used on the public highways of this state. (Formerly Art.XIX Sec.3)

COMMENT: No change in old section.

AIRCRAFT TAX. Sec. ~~4~~ 6. The legislature ~~is-hereby authorized-to-provide,-by-law,-for-the-taxation-of~~ may tax on a more onerous basis than other personal property aircraft using the air space overlying the State of Minnesota and the airports thereof, including any contrivance, now known or hereafter invented, used or designed for navigation of or flight in the air~~,~~. ~~on a more onerous basis than other personal property; provided,-however,-that~~ Any such tax on aircraft shall be in lieu of all other taxation thereon~~,~~. ~~and-except that~~ The legislature may impose such tax upon aircraft of companies paying taxes under any gross earnings system of taxation, and upon the right to use such aircraft in the air space overlying the State of Minnesota and upon the airports thereof, notwithstanding ~~the-fact~~ that earnings from such aircraft may be included in the earnings ~~of-such-companies~~ upon which ~~such~~ gross earnings taxes are computed. Any such law may~~,~~ ~~in-the-discretion-of-the-legislature,~~ provide for the exemption from taxation of any aircraft owned by a nonresident of the state and ~~transiently-or~~ temporarily using the air space overlying the State of Minnesota or the airports thereof. (Formerly Art. XIX Sec.4)

COMMENT: Style.

TACONITE TAXATION. Sec. ~~1~~ 7. ~~Notwithstanding any other provision of this constitution,~~ Laws of Minnesota 1963, Chapter 81, relating to the taxation of taconite and semi-taconite, and facilities for the mining, production and beneficiation thereof shall not be repealed, modified or amended, nor shall any laws in conflict therewith be valid, ~~for a period of 25 years after the adoption of this amendment~~ until November 4, 1989; and laws may be enacted, fixing or limiting for a period of not more than 25 years but not extending beyond the year 1990, the tax to be imposed upon persons or corporations engaged in (1) the mining, production or beneficiation of copper, (2) in the mining, production or beneficiation of copper-nickel, or (3) in the mining, production or beneficiation of nickel. Taxes imposed upon the mining or quarrying of taconite or semi-taconite and upon the production of iron ore concentrates therefrom, which are in lieu of a tax on real or personal property, shall not be considered to be occupation, royalty, or excise taxes within the meaning of this amendment. (Formerly Art.XXI)

COMMENT: Style.

ARTICLE XI

Appropriations and Finances

GENERAL COMMENT: All provisions relating to appropriations and state funds are brought together in this article. The first four sections are restrictions on legislative power. Section 5 serves to consolidate all the exceptions to the restrictions of Sections 2 to 4.

(Formerly Article IX Sec.9)

~~MONEY DRAWN FROM THE STATE TREASURY~~ APPROPRIATIONS REQUIRED. Section 9 1. No money shall ~~ever~~ be paid out of the treasury of this State except in pursuance of an appropriation by law.

COMMENT: Style.

(Formerly Article IX Sec.10)

CREDIT OF THE STATE LIMITED. Sec. ~~10~~ 2. The credit of the State shall never be given or loaned in aid of any individual, association or corporation, except as hereinafter provided. ~~Nor shall there be any further issue of bonds denominated "Minnesota State Railroad Bonds," under what purports to be an amendment to Section ten (10) of Article nine (9) of the Constitution, adopted April 15th, 1858, which is hereby expunged from the Constitution, saving, excepting and reserving to the State, nevertheless, all rights, remedies and forfeitures accruing under said amendment. Provided, however, that~~ for the purpose of creating the agricultural research of the state, the State may establish and maintain a system of rural credits and therefor loan money and extend credit to the people of the said state upon real estate security in such manner and upon such terms and conditions as may be prescribed by law, and to issue and negotiate bonds to provide money to be so loaned. The limit of indebtedness contained in Section 5 of this Article shall not apply to the provisions of this Section, and the purposes for which the credit of the State or the aforesaid municipal subdivisions thereof may be given or loaned as herein provided are declared to be public purposes.

COMMENT: Stricken material is obsolete. Relocated material goes into the general list of exceptions to credit, debt and internal improvements restrictions in Section 5.

(Formerly Article IX Sec.5)

~~STATE-DEBT-LIMITED;-HOW-CONTRACTED~~ INTERNAL IMPROVEMENTS. Sec. ~~5~~ 3. The state shall never be a party in carrying on works of internal improvements, except as authorized by this Constitution~~,~~ . ~~but-it-may-levy-an-excise-tax-upon-any-substance, material,-fluid,-force,-or-other-means-or-instrumentality,-or the-business-of-dealing-in,-selling,-or-producing-any-or-all thereof,-used-or-useful,-in-producing-or-generating-power-for propelling-motor-or-other-vehicles-used-on-the-public-highways of-this-state,-and-shall-place-the-proceeds-of-such-tax-in-the highway-user-tax-distribution-fund-provided-for-in-this-Constitution,-and-further-except-in-cases~~ Where grants ~~of-land-or other-property-shall~~ have been made to the state, especially dedicated ~~by-the-grant~~ to specific purposes ~~and-in-such-cases~~ the state shall devote ~~thereto~~ the avails of such grants to those purposes: and may pledge or appropriate the revenues derived from ~~such~~ the works in aid of their completion.

COMMENT: The stricken material duplicates provisions of the highway article.

(Formerly Article IX Sec.6)

POWER TO CONTRACT PUBLIC DEBTS; ~~PURPOSES;-CERTIFICATES-OF INDEBTEDNESS;-BONDS~~. Sec. ~~6~~ 4. ~~Subdivision-1.~~ The state may contract public debts, for which its full faith, credit and taxing powers may be pledged, at ~~such~~ the times and in ~~such~~ the manner ~~as-shall-be~~ authorized by law, but only for the purposes and subject to the conditions stated in ~~this~~ section 5. *Public debt includes any obligation payable directly, in whole or in part, from a tax of state-wide application on any class of property, income, transaction or privilege, but does not include any obligation which is payable from revenues other than taxes.* (Formerly part of Article IX Sec. 7)

COMMENT: The definition of "public debt" in the last sentence is here combined with the substantive provision to which it applies.

(Formerly Article IX Sec.6 Subd.2)

PURPOSES OF DEBT; AUTHORIZED IMPROVEMENTS. Sec. 5 ~~Subd.2~~. Public debt may be contracted and works of internal improvements carried on as follows:

(a) ~~for-the-acquisition-and-betterment-of~~ to acquire and to better public land and buildings and other public improvements of a capital nature, and to provide moneys to be appropriated or loaned to any agency or political subdivision of the state for such purposes~~;-provided-any~~ if the law authorizing ~~such~~ the debt is adopted by the vote of at least three-fifths of the members of each ~~branch~~ house of the legislature;

~~(b) as authorized in any other section or article of this constitution.~~

COMMENT: This section provides the "shopping list" of permitted internal improvements and public debts. Provisions added to the list are removed from other parts of the constitution. Consolidating these provisions permits the elimination of old Articles XVII, XVIII and XIX.

(b) *to repell invasion or suppress insurrection in time of war;*
(Formerly part of Article IX Sec.7)

(c) ~~for temporary borrowing~~ to borrow temporarily as authorized in section 6 ~~subdivision 3~~;

(d) ~~for~~ to refunding outstanding bonds of the state or any of its agencies, whether or not the full faith and credit of the state has been pledged for the payment of ~~such~~ the bonds; ~~and for refunding certificates of indebtedness authorized by the legislature prior to January 1, 1963.~~

(e) *to establish and maintain highways subject to the limitations of Article XIV;*
(Paraphrase of Article XVI Sec.1)

(f) *to promote forestation and prevent and abate forest fires, including the compulsory clearing and improving of wild lands whether public or private;*

~~Section 1. The state and (or) any of its political subdivisions, if and whenever authorized by the legislature, may contract debts and pledge the public credit for and engage in any work reasonably tending to prevent or abate forest fires, including the compulsory clearing and improvement of wild lands (whether belonging to the public or privately owned) and the assessment against such lands of the value of all benefits so conferred and the payment of damages so sustained in excess of such benefits.~~
(Formerly Article XVII Sec. 1 and part of Article XVIII Sec.1)

(g) ~~Section 1. The state may construct, improve, maintain and operate and may assist counties, cities, towns, villages, boroughs, and public corporation in~~ to constructing, improveing, maintaineing, and operateing airports and other air navigation facilities;
(Formerly Article XIX Sec.1)

(h) ~~for the purpose of~~ to developing the its agricultural resources ~~of the state~~, the State may establish and maintain a system of rural credits and thereby loan money and extend credit ~~to the people of the State~~ upon real estate security in such the manner and upon such the terms and conditions as ~~may be prescribed~~ by law, and to issue ~~and negotiate~~ bonds to provide money to be so loaned; ~~The limit of indebtedness contained in Section 5 of this Article shall not apply to the provisions of this Section; and the purposes for which the credit of the State or the aforesaid municipal subdivisions thereof may be given or loaned as herein provided are declared to be public purposes.~~

(Formerly part of Article IX Sec.10)

and (i) as authorized in any other section or article of this Constitution;
(Formerly paragraph (b) of this section)

As authorized by law political subdivisions may engage in the works permitted by (f) and (g) and contract debt therefor.
(Extracted from predecessor sections to (f) and (g).)

Sec. 6. As authorized by law, certificates of indebtedness may be issued during ~~each~~ a biennium, commencing on July 1 in each odd-numbered year and ending on and including June 30 in the next odd-numbered year, in anticipation of the collection of taxes levied for and other revenues appropriated to any fund of the state for expenditure during that biennium.

No ~~such~~ certificates shall be issued ~~with respect to any fund when the~~ in an amount which ~~thereof~~ with interest thereon to maturity, added to the then outstanding certificates against ~~the same~~ fund and interest thereon to maturity, will exceed the then unexpended balance of all moneys which will be credited to that fund during the biennium under existing laws~~; except that~~ The maturities of ~~any such~~ certificates may be extended by refunding to a date not later than December 1 of the first full calendar year following the biennium in which ~~such~~ the certificates were issued. If moneys on hand in any fund are not sufficient to pay all non-refunding certificates of indebtedness issued on ~~such~~ a fund during any biennium and all certificates refunding the same, plus interest thereon, which are outstanding on December 1 immediately following the close of ~~such~~ the biennium, the state auditor shall levy upon all taxable property in the state a tax collectible in the ~~then~~ ensuing year sufficient to pay the same on or before December 1 of ~~such~~ the ensuing year, with interest to the date or dates of payment.

COMMENT: Style.

Sec.7.
~~Subd. 4.~~ Public debt other than certificates of indebtedness authorized in ~~subd. 3 Sec.~~ 6 shall be evidenced by the issuance of the bonds of this state. All bonds issued under the provisions of this section shall mature within not more than 20 years from their respective dates of issue, and each law authorizing the issuance of ~~such~~ bonds shall distinctly specify the ~~purpose or~~ purposes thereof and the maximum amount of the proceeds authorized to be expended for each purpose. The state treasurer shall maintain a separate and special state bond fund on his official books and records, and when the full faith and credit of the state has been pledged for the payment of ~~such~~ bonds the state auditor shall levy each year on all taxable property within the state a tax sufficient, with the balance then on hand in said fund, to pay all principal and interest on ~~state~~ bonds issued under ~~the provisions of~~ this section, due and to become due within the ~~then~~ ensuing year and to and including July 1 in the second ensuing year. The legislature may by law appropriate funds from any source to the state bond fund, and the amount of moneys actually received and on hand pursuant to ~~such~~ appropriations prior to the levy of the ~~such~~ tax in any year, shall be used to reduce the amount of tax otherwise required to be levied. (Secs. 6 and 7 formerly part of Article IX, Sec.6)

COMMENT: Style.

(Formerly Article VIII Sec. 4)

PERMANENT SCHOOL FUND; SOURCE; INVESTMENT. Sec. 4 8. The permanent school fund of the state shall consist of (a) the proceeds of such lands as are or hereafter may be granted by the United States for the use of schools within each township, (b) the proceeds derived from swamp lands granted to the state, ~~and~~ (c) all cash and investments now or hereafter credited to the permanent school fund and to the swamp land fund~~.~~, and (d) *all cash and investments heretofore credited to the Internal Improvement Land Fund and the lands therein.* No portion of ~~said~~ these lands shall be sold otherwise than at public sale, and in the manner provided by law. All funds arising from the sale or other disposition of ~~such~~ the lands, or income accruing in any way before the sale or disposition thereof, shall be credited to the permanent school fund. Within limitations prescribed by law, to secure the maximum return thereon consistent with the maintenance of the perpetuity of the fund, ~~such~~ the fund with the approval of the state board of investment may be invested in (1) interest bearing fixed income securities of the United States and of its agencies, fixed income securities guaranteed in full as to payment of principal and interest by the United States, bonds of the state of Minnesota, or its political subdivisions or agencies, or of other states, but not more than 50 percent of any issue by a political subdivision, shall be purchased; (2) stocks of corporations on which cash dividends have been paid from earnings for five consecutive years or longer immediately prior to purchase, but not more than 20 percent of ~~said~~ the fund shall be invested therein at any given time, nor more than one percent in stock of any one corporation, nor shall more than five percent of the voting stock of any one corporation be owned; (3) bonds of corporations whose earnings have been at least three times the interest requirements on outstanding bonds for five consecutive years or longer immediately prior to purchase, but not more than 40 percent of ~~said~~ the fund shall be invested in corporate bonds at any given time. The percentages referred to above shall be computed using the cost price of the stocks or bonds. The principal of the permanent school fund shall be perpetual and inviolate forever; provided, that this ~~shall~~ does not prevent the sale of any public or private stocks or bonds at less than the cost ~~thereof~~ to the fund; however, all losses not offset by ~~all~~ gains, shall be repaid to the fund from the interest and dividends earned thereafter. The net interest and dividends arising from the ~~investment thereof~~ fund shall be distributed to the different school districts of the state in proportion to the number of scholars in each district between the ages of five and twenty-one years. *No such investment shall be made until approved by a board of investment consisting of the governor, the state auditor, the state treasurer, the secretary of state, and the attorney general, who are hereby constituted a state board of investment for the purpose of administering and directing the investment of all state funds.*

The state board of investment shall not permit the state funds to be used for the underwriting or direct purchase of municipal securities from the issuer or his agent.

A board of investment consisting of the governor, the state auditor, the state treasurer, the secretary of state, and the attorney general; who are is hereby constituted a state board of investment for the purpose of administering and directing the investment of all state funds. The state board of investment shall not permit the state funds to be used for the underwriting or direct purchase of municipal securities from the issuer or his agent.

COMMENT: Clause (d) substitutes for all of Art.IV Sec. 32(b). Other changes are style.

(Formerly Article VIII Sec.5)

INVESTMENT OF PERMANENT UNIVERSITY FUND; ~~approval; bonded indebtedness not to exceed 15 percent, draw not less than two percent, run not less than one year nor more than 30 years~~. Sec. ~~5~~ 9. The permanent university fund of this state may be loaned to or invested in the bonds of any county, school district, city, town, or village of this state and in first mortgage loans secured upon improved and cultivated farm lands of this state, but no such investment or loan shall be made until approved by the board of ~~commissioners~~ investment designated by law to regulate the investment of the permanent school fund and the permanent university fund of this state; nor shall such loan or investment be made when the bonds to be issued or purchased would make the entire bonded indebtedness exceed 15 percent of the assessed valuation of the taxable property of the county, school district, city, town, or village issuing such bonds; nor shall any such farm loan or investment be made when such investment or loan would exceed 30 percent of the actual cash value of the farm land mortgaged to secure said investment; nor shall such investments or loans be made at a lower rate of interest than two percent per annum, nor for a shorter period than one year nor for a longer period than 30 years ~~and no change of the town, school district, city, village, or county lines shall relieve the real property in such town, school district, county, village, or city in this state at the time of issuing such bonds from any liability for taxation, to pay such bonds~~.

COMMENT: Stricken last lines state the legally obvious.

(Formerly Article VIII Sec. 7)

EXCHANGE OF PUBLIC LANDS; RESERVATION OF RIGHTS. Sec.~~7~~ 10. Any of the public lands of the state, including lands held in trust for any purpose, may, with the unanimous approval of a commission consisting of the governor, the attorney general and the state auditor, be exchanged for lands of the United States ~~and~~/ or privately owned lands ~~in such manner~~ as the legislature may provide, and the lands so acquired shall be subject to the trust, if any, to which the lands exchanged therefor were subject, ~~and~~ The state shall reserve all mineral and water power rights in lands ~~so~~ transferred by the state.

COMMENT: Style.

TIMBER LANDS SET APART AS STATE FORESTS; DISPOSITION OF REVENUE. Sec. ~~6~~ 11. Such of the school and other public lands of the state as are better adapted for the production of timber than for agriculture may be set apart as state school forests or other state forests, as the legislature may provide, and the legislature may provide for the management of the same on forestry principles. The net revenue therefrom shall be used for the purposes for which the lands were granted to the State.
(Formerly Article VIII, Sec.6)

(Formerly Article IX Sec.15)

COUNTY, CITY OR TOWNSHIP AID TO RAILROADS LIMITED. Sec. ~~15~~ 12. The legislature shall not authorize any county, township ~~city~~ or ~~other~~ municipal corporation to ~~issue bonds, or to~~ become indebted ~~in any manner,~~ to aid in the construction or equipment of ~~any or all~~ railroads to any amount that ~~shall~~ exceeds five ~~(5)~~ per cent of the value of the taxable property within ~~such~~the county, township ~~city,~~ or ~~other~~ municipal corporation. The amount of ~~such~~ taxable property ~~to be ascertained, and~~ shall be determined by the last assessment ~~of said property made, for the purpose of state and county taxation,~~ previous to the incurring of ~~such~~ the indebtedness.

COMMENT: Style.

(Formerly Article IX, Sec.12)

STATE SCHOOL FUND; INVESTMENT; SAFE KEEPING; ALL STATE FUNDS TO BE DEPOSITED IN NAME OF STATE. Sec. ~~12~~ 13. ~~Suitable laws shall be passed by the legislature for the safe keeping, transfer and disbursements of the State and school funds; and~~ All officers and other persons charged with the same or any part of the same, or the safe keeping of state funds ~~thereof~~, shall be required to give ample security for ~~all moneys and~~ funds ~~of any kind~~ received by them; to make forthwith and keep an accurate entry of each sum received, and of each payment and transfer; and if any of said officers or other persons shall convert to his own use in any manner or form, or shall loan, with or without interest, or shall deposit in his own name, or otherwise than in the name of the State of Minnesota; or shall deposit in banks or with any person or persons, or exchange for other funds or property, any portion of the funds of the State or the school funds aforesaid, except in the manner prescribed by law, every such act shall be and constitute an embezzlement of so much of the aforesaid State and school funds, or either of the same, as shall thus be taken, or loaned, or deposited or exchanged, and shall be a felony; and any failure to pay over, produce or account for the State school funds, or any part of the same entrusted to such officer or persons as by law required on demand, shall be held and be taken to be prima facie evidence of such embezzlement.

COMMENT: This section has the single substantive impact of 1) making embezzlement of state funds a "constitutional" crime and 2) requiring "ample security for all moneys." Both policies should be left to the legislature and this section should be repealed as "almost without substantive effect."

~~ARTICLE XI~~

ARTICLE XII

Special Legislation; Local Government

GENERAL COMMENT: The restrictions on special legislation are so intertwined with the local government provisions of the constitution that they are combined in a single article. All other changes are stylistic except the inclusion of the restriction of divorces by special law with the other special law restrictions in order to eliminate old Section 28 of Article IV.

AGAINST SPECIAL LEGISLATION. Sec. ~~33~~ 1. *In all cases when a general law can be made applicable, no a special law shall* not *be enacted, except as provided in* ~~Article XI, section 2.~~ *and; Whether a general law could have been made applicable in any case* ~~is hereby declared a judicial question, and as such~~ *shall be judicially determined without regard to any legislative assertion on that subject. The legislature shall pass no local or special law authorizing the laying out, opening, altering, vacating or maintaining roads, highways, streets or alleys; remitting fines, penalties or forfeitures; changing the names of persons, places, lakes or rivers; authorizing the adoption or legitimation of children; changing the law of descent or succession; conferring rights upon minors; declaring any named person of age; giving effect of informal or invalid wills or deeds, or affecting the estates of minors or persons under disability; granting divorces; exempting property from taxation or regulating the rate of interest on money; creating private corporations, or amending, renewing, extending or explaining the charters thereof; granting to any private corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever or authorizing public taxation for a private purpose. The inhibitions of local or special laws in this section shall not be construed to prevent the passage of general laws on any of the subjects enumerated.* (Formerly Art.IV Sec. 33) ("Divorces" formerly Art.IV Sec.28)

SPECIAL LAWS. Sec. 2. Every law which upon its effective date applies to a single local government unit or to a group of such units in a single county or a number of contiguous counties is a special law and shall name the unit or, in the latter case, the counties, to which it applies. The legislature may enact special laws relating to local government units, but a special law, unless otherwise provided by general law, shall become effective only after its approval by the affected unit expressed through the voters or the governing body and by such majority as the legislature may direct. Any special law may be modified or superseded by a later home rule charter or amendment applicable to the same local government unit, but this does not prevent the adoption of subsequent laws on the same subject. The Legislature may repeal any existing special or local law, but shall not amend, extend or modify any of the same except as in this section.

LOCAL GOVERNMENT, LEGISLATION AFFECTING. Sec. ~~1~~ 3. The legislature may provide by law for the creation, organization administration, consolidation, division, and dissolution of local government units and their functions, for the change boundaries thereof, for their officers, including qualifi for office, both elective and appointive, and for the tr of county seats. ~~No~~ A county boundary ~~shall be~~ may not changed or county seat transferred until approved by a ma of the voters of each county affected voting thereon.

HOME RULE CHARTERS. Sec. 3 4. Any city or village and any county or other local government unit when authorized by law, may adopt a home rule charter for its government. ~~in accordance with this constitution and the laws.~~ ~~No such~~ A charter shall become effective ~~without~~ the approval *by such majority* of the voters of the local government unit ~~affected by such majority~~ as the legislature ~~may~~ prescribes by general law. If a charter provides for the consolidation or separation of a city and a county, in whole or in part, it shall not be effective without approval of the voters both in the city and in the remainder of the county by the majority required by law.

CHARTER COMMISSIONS. Sec. 4 5. The legislature shall provide by law for charter commissions. Notwithstanding any other constitutional limitations, the legislature may require that commission members shall be freeholders, provide for their appointment by judges of the district court, and permit any member to hold any other elective or appointive office other than judicial. Home rule charter amendments may be proposed by a charter commission or by a petition of five percent of the voters of the local government unit as determined by law and shall not become effective until approved by the voters by the majority required by law. Amendments may be proposed and adopted in any other manner provided by law. A local government unit may repeal its home rule charter and adopt a statutory form of government or a new charter upon the same majority vote as is required by law for the adoption of a charter in the first instance.

~~EXISTING LAWS AND CHARTERS. Sec. 5.~~ (See Report on Obsolete Provisions)

ARTICLE ~~XV~~ XIII

Miscellaneous Subjects ~~Schedule~~

UNIFORM SYSTEM OF PUBLIC SCHOOLS. Section 1. The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature to establish a general and uniform system of public schools. ~~*PUBLIC-SCHOOLS-IN-EACH-TOWNSHIP-TO-BE-ESTABLISHED; Sec.-2.*~~ *The Legislature shall make such provisions, by taxation or otherwise, as-with-the-income-arising-from-the-school-fund; will secure a thorough and efficient system of public schools in-each-township-in throughout the state.*
(Formerly Article VIII Sec. 1 and 2

COMMENT: Combines two sections.

PROHIBITION AS TO AIDING SECTARIAN SCHOOL. Sec.2. *But In no case shall the-moneys-derived-as-aforesaid,-or-any-portion thereof,-or any public moneys or property, be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught.*
(Formerly Article VIII Sec.28)

COMMENT: Style.

UNIVERSITY OF MINNESOTA; ~~*LOCATION-CONFIRMED*~~. *Sec.3.* ~~*The location-of-the-University-of-Minnesota,-as-established-by existing-laws,-is-hereby-confirmed-and-said-institution-is hereby-declared-to-be-the-University-of-the-State-of-Minnesota.*~~ *All the rights, immunities, franchises and endowments heretofore granted or conferred upon the University of Minnesota are hereby perpetuated unto the said university; and-all-lands which-may-be-granted-hereafter-by-Congress,-or-other-donations for-said-university-purposes,-shall-vest-in-the-institution referred-to-in-this-section.* (Formerly Article VIII Sec.3)

COMMENT: The "grandfather clause" as to the location of the University is stricken because it is now obsolete. The last clause is stricken as unnecessary.

LANDS MAY BE TAKEN FOR PUBLIC USE. Sec. 4. Lands may be taken for public way, for the purpose of granting to any corporation the franchise of way for public use. In all cases, however, a fair and equitable compensation shall be paid for such land, and the damages arising from the taking it of-the-same; but all corporations being common carriers enjoying the right of way in pursuance of the provisions of this section, shall be bound to carry the mineral, agricultural and other productions of manufacturers on equal and reasonable terms.

(Formerly Article X Sec.4)

COMMENT: Style.

PROHIBITION OF LOTTERIES, Sec. ~~31~~ 5. The legislature shall never not authorize any lottery or the sale of lottery tickets. (Formerly Article IV Sec.31)

COMMENT: Style.

AGAINST COMBINATIONS OR POOLS TO AFFECT MARKETS. Sec.~~35~~ 6. Any combinations of persons, either as individuals or as members or officers of any corporation, to monopolize the markets for food products in this State, or to interfere with, or restrict the freedom of such markets, is hereby ~~declared to be~~ a criminal conspiracy, and shall be punished ~~in such manner~~ as the legislature may provide. (Formerly Article IV Sec.35)

COMMENT: Style.

NO LICENSE TO PEDDLE. Sec. ~~18~~ 7. Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor. (Formerly Article I Sec. 18)

COMMENT: No change from old Section 18 of Article I.

FOLLOWING SECTION SHOWS AMENDMENT PROPOSED FOR RATIFICATION AT THE GENERAL ELECTION 11-7-72

CONSTITUTIONAL AMENDMENT; VETERANS' BONUSES. Sec.~~1~~ 8 The state may at any time pay an adjusted compensation to persons who have served in the Armed Forces of the United States during the period from and including September 16, 1940, through December 30, 1946 or during the period of the Vietnam conflict; may levy taxes and appropriate monies for such purpose; and if and whenever authorized, and in such amounts and on such terms as may be fixed by ~~the Legislature~~ law, may expend monies, may contract debts, may issue and negotiate bonds or certificates of indebtedness, or both, and may pledge the public credit, to provide money therefor. ~~The~~ Any inconsistent provisions ~~of section 5 of Article 9~~ of the Constitution shall not apply to the provisions of this section, and the purposes for which the credit of the state may be given or loaned as herein provided are declared to be public purposes. The duration of the Vietnam conflict may be defined by law, for the purposes of this section. (Formerly Article XX.)

COMMENT: Style.

MILITIA ORGANIZATION. Sec. ~~7~~ 9. ~~It shall be the duty~~ of The legislature ~~to~~ shall pass ~~laws~~ necessary for the organization, discipline and service of the militia of the State ~~as may be deemed necessary~~. (Formerly Article XII)

COMMENTS: Style.

SEAT OF GOVERNMENT. Sec. ~~7~~ 10. The seat of government of the State ~~shall be~~ is at the city of St. Paul. ~~but~~ The legislature~~, at their first or any future session,~~ may provide by law for a change of the seat of government by a majority vote of the people ~~or may~~ locate the same upon the land granted by congress for the seat of government. ~~to the State; and in the event of~~ If the seat of government being removed from the city of St. Paul to any other place in the State~~;~~ is changed, the capitol building and grounds shall be dedicated to an institution for the promotion of science, literature and the arts, to be organized by the legislature of the State, and of which institution the Minnesota Historical Society shall always be a department.

(Formerly Art.XV Sec.1)

COMMENT(S) Style.

STATE SEAL. Sec. ~~4~~ 11. ~~There shall be~~ A seal of the State~~;~~ which shall be kept by the secretary of state~~;~~ and be used by him officially~~;~~. and It shall be called the great seal of the State of Minnesota. and It shall be attached to all the official acts of the governor (his signature to acts and resolves of the legislature excepted) requiring authentication. ~~The legislature shall provide for an appropriate device and motto for said seal.~~

(Formerly Article XV Sec.4)

COMMENT(S) Style; obsolete material removed.

ARTICLE XIV

Public Highway System

AUTHORITY OF STATE. Section 1. ~~Subject to the limitations of this article~~ The state may ~~establish, locate,~~ construct, ~~reconstruct, improve~~ and maintain public highways, ~~and~~ may assist political subdivisions in such work. *and by law may authorize any political subdivision to aid in such work upon such terms, conditions and in such manner as shall be provided by law to aid or lend aid to the establishment, location, construction, reconstruction, improvement and maintenance of trunk highways within their its respective boundaries.* (Formerly part of Article XVI Sec.11)

COMMENT: Power to authorize local governments to assist is combined with grant of other state highway powers.

TRUNK HIGHWAY SYSTEM. Sec. 2. There is hereby created a trunk highway system which shall be ~~established, located,~~ constructed ~~reconstructed, improved~~ and maintained as public highways by the state. ~~Said trunk highway routes numbered 1 through 70 described in the constitutional amendment adopted November 2, 1920, the trunk highway routes added to said foregoing routes by the legislature prior to the trunk highway system hereby created pursuant to authority in this article contained.~~ The ~~said~~ highways shall extend as nearly as may be along the routes number 1 through 70 described in ~~said~~ the constitutional amendment adopted November 2, 1920, and the routes described in any act of the legislature which has made or ~~will~~ hereafter makes a route a part of the ~~said~~ trunk highway system. *The more specific and definite location of said roads, officers, or bridges, and in such manner as shall be prescribed by law,* ~~but in fixing such specific and definite routes there shall not be any deviation from the starting points or terminals set forth in said routes nor shall there be any deviation in fixing such routes from the various villages and cities named therein through which such routes are to pass.~~

The legislature by law may add ~~by law~~ new routes to said trunk highway system. ~~Said~~ The trunk highway system ~~shall~~ may not exceed 12,200 miles in extent, ~~provided however that~~ except the legislature may add ~~by law~~ trunk highways ~~to said system~~ in excess of ~~said foregoing~~ the mileage limitation ~~as the legislature may determine~~ as necessary or expedient to ~~meet, use, or otherwise~~ take advantage of any federal aid made available by the United States to the State of Minnesota ~~for highway purposes.~~

Any route added by the legislature to the trunk highway system ~~either prior or subsequent to the effective date of this article~~ may be ~~altered, amended,~~ relocated, ~~changed~~ or removed from ~~said~~ the system, as provided by law. The definite location of ~~said~~ trunk highways numbered 1 through 70 ~~heretofore fixed pursuant to this article~~ may be ~~thereafter changed and~~ relocated as provided by law but no ~~such change or~~ relocation shall ~~be authorized which would~~ cause a deviation from the

starting points or terminals ~~set forth in said routes~~ nor cause any deviation from the various villages and cities ~~named therein~~ through which ~~such~~ the routes are to pass under the constitutional amendment adopted November 2, 1920. ~~The more specific and definite~~ *Location of said routes shall may be fixed and determined by boards, officers or tribunals and in ~~such~~ the manner as shall be prescribed by law.*

COMMENT: Redundant words are eliminated. Authority to delegate power to locate highways is moved to the end of this section.

COUNTY STATE-AID HIGHWAY SYSTEM. Sec. 3. ~~The legislature is hereby authorized to provide by law for the establishment of county state aid highways.~~ The A county state-aid highway system shall be ~~established, located,~~ constructed, ~~reconstructed, improved,~~ and maintained by the counties as public highways in ~~such~~ a the manner ~~as shall be~~ provided by law. ~~Such~~ The system shall include streets in ~~cities, villages, and boroughs~~ municipalities of less than 5,000 population where necessary, ~~as provided by law,~~ to provide an integrated and coordinated highway system and it may include similar streets in ~~other cities, villages, and boroughs~~ larger municipalities. ~~The county state aid highway system as herein authorized shall not exceed 30,000 miles in extent, provided however that said limitation of 30,000 miles may be increased or decreased by the legislature by law.~~

COMMENT: Redundant words are eliminated. The last sentence cancels itself.

MUNICIPAL STATE-AID STREET SYSTEM. Sec. 4. ~~The legislature is hereby authorized to provide by law for the establishment of a system of municipal state aid streets within cities, villages and boroughs.~~ ~~*Having a population of 5,000 or more*~~ The A municipal state-aid street system shall be ~~established, located, constructed, reconstructed, improved~~ and maintained as public highways by ~~such cities, villages and boroughs~~ *municipalities having a population of 5,000 or more* in ~~such~~ the manner ~~as shall be~~ provided by law. ~~The municipal state aid street system as herein authorized shall not exceed 1,200 miles in extent, provided that said limitation of 1,200 miles may be increased or decreased by the legislature by law.~~

OMMENT: Redundant words are eliminated. The last sentence cancels itself.

HIGHWAY USER TAX DISTRIBUTION FUND. Sec.5. There is hereby created a ~~fund which shall be known as the~~ highway user tax distribution fund~~,~~ to ~~The highway user tax distribution fund shall~~ be used solely for highway purposes as specified in this article. ~~Said~~ The fund ~~shall~~ consists of the proceeds of any taxes authorized ~~to be imposed~~ by sections 9 and 10 of this article. ~~After the deduction of collection costs as provided by law and the payment of refunds authorized by law,~~ The net proceeds of ~~such~~ the taxes shall be ~~transferred to the following funds in the following proportions;~~ apportioned: 62 percent to the trunk highway fund; 29 percent to the county state-aid highway fund; nine percent to the municipal state-aid street fund. ~~After January 1, 1963, the legislature is authorized to provide by law that~~ Five percent of the net proceeds of the highway user tax distribution fund may be set aside and ~~if so set aside shall be~~ apportioned ~~as provided~~ by law to one or more of the three foregoing funds~~, on such basis as the legislature may determine. After said five percent may have been so set aside~~ The balance of the highway user tax distribution fund shall ~~In all events~~ be transferred to the trunk highway fund, the county state aid highway fund, and the municipal state aid street fund in accordance with the percentages hereinbefore set forth. No change in the apportionment of the ~~proceeds so set aside shall~~ five percent may be made within six years of ~~the commencement of the year in which~~ the last previous change ~~occurred~~.

COMMENT: Redundant words are eliminated.

TRUNK HIGHWAY FUND. Sec. 6. There is hereby created a trunk highway fund which shall be used solely for the purposes specified in section 2 of this article and the payment of principal and interest of any bonds ~~which may be~~ issued under the authority of section ~~12~~ 11 of this article, and any bonds issued for trunk highway purposes ~~under the constitution~~ prior to July 1, 1957. All payments of principal and interest on ~~any such~~ bonds ~~issued~~ shall be a first charge on moneys coming into this fund during the year in which ~~such~~ the principal or interest is payable. ~~The fund created by this section shall also be used for the carrying on of work undertaken and the discharge of obligations incurred payable out of or chargeable to the trunk highway fund or the trunk highway sinking fund constituted and established by the constitution prior to July 1, 1957, and all money in said funds on the effective date of this article are hereby transferred to the fund created by this section.~~

COMMENT: Last sentence has been implemented and may be eliminated.

COUNTY STATE-AID HIGHWAY FUND. Sec. 7. There is hereby created a county state-aid highway fund. ~~Said~~ The fund shall~~,~~ ~~in addition to~~ receive the share of the highway user tax distribution fund transferred to it by section 5. ~~receive and include all moneys accruing from the income derived from investments in the internal improvement land fund.--All moneys in the state road and bridge fund as constituted and established by the constitution prior to July 1, 1957, are hereby transferred on the effective date of this article to the fund created by this section.--To render aid for highway purposes~~ The county state-aid highway fund shall be apportioned among the counties as provided by law. ~~Except as provided herein,~~ The funds apportioned shall be used by the counties as provided by law for aid in the ~~establishment, location, construction, reconstruction, improvement~~ and maintenance of county state-aid highways. The legislature may authorize the counties~~,~~ ~~as provided~~ by law~~,~~ to use a part of ~~said~~ the funds ~~so~~ apportioned to them to ~~render~~ aid in the ~~establishment, location,~~ construction~~,~~ ~~reconstruction, improvement~~ and maintenance of other county highways, township roads, municipal streets, and any other public highways, including but not limited to trunk highways and municipal state-aid streets within the respective counties.

COMMENT: The internal improvements land fund (Art.IV Sec.32(b)) is eliminated in this revision so the incidental income it produces will not be available to county-state aid highways. This income amounts to only .00026% of current expenditures for county-state aid highways.

MUNICIPAL STATE-AID STREET FUND. Sec. 8. There is hereby created a municipal state-aid street fund. ~~To render aid for highway purposes the municipal state aid street fund shall~~ to be apportioned as provided by law ~~among the cities, villages and boroughs~~ municipalities having a population of 5,000 or more. ~~Except as provided herein,~~ The fund ~~apportioned~~ shall be used by ~~such cities, villages and boroughs~~ municipalities as provided by law for ~~aid in~~ the ~~establishment, location,~~ construction, ~~reconstruction, improvement~~ and maintenance of municipal state-aid streets. The legislature may authorize ~~such cities, villages and boroughs, as provided by law,~~ municipalities to use a part of ~~said~~ the fund ~~so apportioned to them to render aid~~ in the ~~establishment, location,~~ construction, ~~reconstruction improvement~~ and maintenance of other municipal streets ~~any other public streets, including but not limited to~~ trunk highways ~~within such cities, villages and boroughs~~ and county state-aid highways within the counties ~~wherein such cities, villages and boroughs are located.~~

COMMENT: Redundant words are eliminated.

TAXATION OF MOTOR VEHICLES. Sec. 9. The ~~legislature is hereby authorized to provide by law for the taxation of~~ state may tax motor vehicles using the public streets and ~~highways of this state~~ on a more onerous basis than other personal property; ~~provided, however, that.~~ Any such tax on motor vehicles shall be in lieu of all other taxes thereon, except wheelage taxes imposed by political subdivisions solely for highway purposes. ~~and except that~~ The legislature may impose such tax upon motor vehicles of companies paying taxes under gross earnings system of taxation ~~and upon the right to use such vehicles upon the public highways~~ notwithstanding ~~the fact~~ that earnings from ~~such~~ the vehicles may be included in the earnings ~~of such companies~~ upon which ~~such~~ gross earnings taxes are computed. ~~Any such law may, in the discretion of the legislature, provide for the exemption~~ The law may exempt from taxation ~~of~~ any motor vehicle owned by a nonresident of the state ~~but~~ properly licensed in another state, and transiently or temporarily using the streets and highways of the state. The proceeds of ~~such~~ the tax shall be paid into the highway user tax distribution fund.

COMMENT: Style.

TAXATION OF MOTOR FUEL. Sec. 10. The state may levy an excise tax upon any substance, material, fluid, force or other means or instrumentality, or the business of dealing in, selling or producing any or all thereof, used or useful in producing or generating power for propelling motor or other vehicles used on the public highways of this state. The proceeds of ~~such~~ the tax shall be paid into the highway user tax distribution fund.

COMMENT: Style.

~~PARTICIPATION OF POLITICAL SUBDIVISIONS IN TRUNK HIGHWAY WORK.---Sec. 11. The legislature may authorize political subdivisions, upon such terms, conditions and in such manner as shall be provided by law, to participate in trunk highway work. The enumeration as in this section contained of the power of the legislature to authorize political subdivisions to participate in trunk highway work shall never operate or be construed so as to limit, prejudice or curtail in any degree or manner whatsoever any power or authority now vested in the legislature concerning or relating to any other public highways.~~

COMMENT: The slashed material is relocated in section 1. The stricken material is an unnecessary restatement of the presumption against implied repeals.

BONDS. Sec. ~~12~~ 11. The legislature may provide by law for the ~~issue and~~ sale of ~~the~~ bonds ~~of the state in such amount as may be necessary~~ to carry out the provisions of Section 2. ~~of this article; provided, however, that the total amount of such~~ Bonds issued and unpaid shall not at any time exceed $150,000,000, par value. The proceeds ~~of the sale of such bonds~~ shall be paid into the trunk highway fund. Any bonds ~~so issued and sold~~ shall mature serially over a term not exceeding 20 years~~.~~, ~~They~~ shall not be sold for less than par and accrued interest and shall not bear interest at a greater rate than five percent per annum. ~~In case~~ If the trunk highway fund ~~shall~~ is not ~~be~~ adequate to pay ~~meet the payment of the~~ principal and interest of the bonds authorized by the legislature as hereinbefore provided, when due, the legislature may levy upon ~~provide by law for the taxation of~~ all taxable property of the state in an amount sufficient to meet the deficiency, or it may~~, in its discretion,~~ appropriate to ~~such~~ the fund moneys in the state treasury not otherwise appropriated.

COMMENT: Style.

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TABLE SHOWING DISPOSITION OF SECTIONS OF PRESENT CONSTITUTION

OLD	NEW
ARTICLE I	
Sec. 1-17	Same
Sec.18	Art.XIII Sec.7
Article II	
Sec. 1	Same
2	Same
Article III	
Sec. 1	Same
Article IV	
Sec. 1	Art.IV Sec.1,4,12,21
2	Same
3	Art.IV Sec.6, 13
4	Art.IV Sec.7
5	Art.IV Sec.15
6	Art.IV Sec.12
7	Art.IV Sec.9
8	Art.IV Sec.10
9	Art.IV Sec.5
10	Art.IV Sec.18
11	Art.IV Sec.23
12	Art.XI Sec.1; Art.IV Sec.24
13	Art.IV Sec.22
14	Art.VIII Sec.1
15	Repealed because encompassed by Art.VII Sec.1 & 6
16	Art.IV Sec.11
17	Art. IV Sec.6, 4
18	Art. IV Sec.25
19	Art. IV Sec.14
20	Art. IV Sec.19
21	Art. IV Sec.20
22	Art. IV Sec.21
23	Art. IV Sec. 3
24	Art. IV Sec. 3
25	Art. IV Sec. 6
26	Previously repealed
27	Art. IV Sec.17
28	Incorporated in Art.XII Sec.1
29	Art. IV Sec.8
30	Art. IV Sec.16
31	Art. XIII Sec.5
32(a)	Art. X Sec. 2
32(b)	Incorporated in Art.XI Sec.8
33	Art. XII Sec.1
34	Repealed as obsolete
35	Art. XIII Sec.6

Article V

Sec. 1	Same
2	Art. VII Sec.8
3	Art. V Sec. 2
4	Art. V Sec. 3, 7
5	Art. V Sec. 4
6	Art. V Sec. 5
7	Repealed as obsolete
8	Art. V Sec.6

Article VI

No changes

Article VII

Sec. 1	Same
2	Art. VII Sec. 1
3	Art. VII Sec. 2
4	Art. VII Sec. 2
5	Art. VII Sec. 4
6	Art. VII Sec. 5
7	Art. VII Sec. 6
8	Previously repealed
9	Art. VII Sec. 7

Article VIII

Sec. 1	Art. XIII Sec. 1
2	Art. XIII Sec. 1, 2
3	Art. XIII Sec. 3
4	Art. XI Sec. 8
5	Art. XI Sec. 9
6	Repealed as unnecessary
7	Art. XI Sec. 10

Article IX

Sec. 1	Art. X Sec.1
1-A	Art. X Sec. 4
1-B	Art. X Sec. 4 or repeal as obsolete by implication
2	Previously repealed
3	Previously repealed by implication
4	Previously repealed by implication
5	Art. XI Sec. 3
6 Subd.1	Art. XI Sec. 4
Subd.2	Art. XI Sec. 5(a) (c) (d) & (i
Subd.3	Art. XI Sec.6
Subd. 4	Art. XI Sec.7
Sec. 7	Art. XI Sec.4
8	Repealed as unnecessary

Article IX (Cont.)

Sec. 9	Art. XI Sec. 1
10	Art. XI Sec.2, 5 (h)
11	Repealed as obsolete
12	Art. XI Sec.12
13	Repealed as obsolete
14(a)	Previously repealed
14(b)	Previously repealed by implication
15	Art. XI Sec.11

Article X

Repealed as obsolete.

Article XI

Sec. 1	Art. XII Sec. 3
2	Art. XII Sec. 2
3	Art. XII Sec. 4
4	Art. XII Sec. 5
5	Repealed as obsolete

Article XII

Sec. 1	Art. XIII Sec. 9

Article XIII

Sec. 1	Art. VIII Sec. 2
2	Art. VIII Sec. 6
3	Art. VIII Sec. 3
4	Art. VIII Sec. 4
5	Art. VIII Sec. 5

Article XIV

Sec. 1	Art. IX Sec. 1
2	Art. IX Sec. 2
3	Art. IX Sec. 3, 2

Article XV

Sec. 1	Art. XIII Sec.10
2	Repealed as obsolete
3	Art. VII Sec. 3
4	Art. XIII Sec.12
5	Art. XIII Sec.11

Article XVI

Sec. 1	Art. XIV Sec.1
2	Art. XIV Sec.2
3	Art. XIV Sec.3
4	Art. XIV Sec.4
5	Art. XIV Sec.5

Article XVI (Cont)

Sec. 6	Art. XIV Sec.6
7	Art. XIV Sec.7
8	Art. XIV Sec.8
9	Art. XIV Sec.9
10	Art. XIV Sec.10
11	Art. XIV Sec.1
12	Art. XIV Sec.11

Article XVII

Sec. 1	Art. XI Sec.5(f)
2	Repealed as obsolete

Article XVIII

Sec. 1	Art. X
Sec. 2	Repealed as obsolete

Article XIX

Sec. 1	Art. XI Sec. 5(g)
2	Art. XI Sec. 5(g)
3	Art. X Sec. 6
4	Art. X Sec. 7
5	Repealed as obsolete

Article XX

Sec. 1	Art. XIII Sec. 8
2	Repealed as obsolete

Article XXI

Sec. 1	Art. X Sec.5

OBSOLETE PROVISIONS

In the Judgement of the Structure and Form Committee the following provisions of the constitution are without any substantive significance or are of such minor consequence as to be appropriately classed as obsolete. Therefore, we recommend their repeal as part of the form revision our Committee is proposing. Following each section is a short comment explaining the basis of the Committee decision.

ARTICLE IV Sec. 15

EXCLUSION FROM CIVIL RIGHTS. Sec. 15. The legislature shall have full power to exclude from the privilege of electing or being elected any person convicted of bribery, perjury, or any other infamous crime.

COMMENT: The substance of this provision is encompassed by Art. VII Sections 2 and 7 (Renumbered at Art.VII Sections 1 and 6)

ARTICLE IV Sec. 32[b]

INTERNAL IMPROVEMENT LANDS; INVESTMENT OF PROCEEDS IN BONDS. Sec. 32[b] All lands donated to the State of Minnesota for the purpose of internal improvement, under the eighth section of the act of Congress, approved September fourth, eighteen hundred and forty-one, being "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," shall be approaised and sold, in the same manner and by the same officers, and the minimum price shall be the same as is provided by law for the appraisement and sale of the school lands, under the provisions of title one (1), chapter thirty-eight, of the General Statutes, except the modifications hereinafter mentioned. All moneys derived from the sale of said lands shall be invested in the bonds of the United States, or of the State of Minnesota issued since 1860; and the moneys so invested shall constitute the Internal Improvement Land Fund of the State. All moneys received by the county treasurer under the provisions of title one (1), chapter thirty-eight (38), aforesaid, derived from the sale of internal improvement lands, shall be held at all times subject to the order and direction of the state treasurer for the benefit of the fund to which it belongs; and on the fifteenth day of June in each year, and at such other times as he may be requested so to do by the state treasurer, he shall pay over to the said state treasurer all moneys received on account of such fund.

The bonds purchased in accordance with this amendment shall be transferable only upon the order of the governor, and on each bond shall be written "Minnesota Internal Improvement Land Fund of the State, transferable only on the order of the governor."

PRINCIPAL NOT TO BE REDUCED. The principal sum from all sales of internal improvement lands shall not be reduced by any charges or costs of officers, by fees, or by any other means whatever; and section fifty (50), of title one (1), chapter thirty-eight (38), of the General Statutes, shall not be applicable to the provisions of this amendment, and wherever the words "school lands" are used in said title, it shall read as applicable to this amendment, "Internal Improvement Lands."

APPROPRIATIONS THEREFROM TO BE VOTED UPON BEFORE VALID. The force of this amendment shall be to authorize the sale of the internal improvement lands, without further legislative enactment.

COMMENT: The principal of the fund treated by this section is less than $500,000. Neither principal nor annual income therefrom make the fund of any real consequence. Therefore, the Form and Structure Committee added a short clause to Art.VIII Sec.4 (numbered as Art.XI Sec.9) making these assets part of the permanent school fund.

ARTICLE V Sec. 7

TERMS OF FIRST STATE OFFICERS. Sec.7. The term of each of the Executive officers named in this Article, shall commence on taking the oath of office on or after the first day of May, 1858, and continue in office till the first Monday of January, 1861, and until their successors shall have been duly elected and qualified; and the same above-mentioned time for qualification and entry upon the duties of their respective offices shall extend and apply to all other officers elected under the State Constitution, who have not already taken the oath of office, and commenced the performance of their official duties.

COMMENT: Obviously obsolete.

ARTICLE IX Sec. 8

DISPOSITION OF FUNDS RECEIVED FOR BONDS. Sec. 8. The money arising from any loan made, or debt or liability contracted, shall be applied to the object specified in the act authorizing such debt or liability, or to the repayment of such debt or liability, and to no other purpose whatever.

COMMENT: With or without this provision any funds borrowed would have to be used pursuant to and for the purposes specified by the act authorizing the borrowing. Therefore, this section adds nothing to the law.

ARTICLE IX Sec. 11

PUBLICATION OF RECEIPTS AND EXPENDITURES BY TREASURER. Sec.11. There shall be published by the treasurer in at least one newspaper printed at the seat of government, during the first week in January in each year, and in the next volume of the acts of the legislature, detailed statements of all moneys drawn from the treasury during the preceding year, for what purpose and to whom paid, and by what law authorized; and also of all moneys received, and by what authority and from whom.

COMMENT: The requirements of this section are so impracticable that it has been ignored for many decades, thus, by practical measurement and practice, it is obsolete.

ARTICLE IX Sec. 13

GENERAL BANKING LAW; PROVISION AND RESTRICTIONS. Sec. 13. The legislature may, by a two-thirds vote, pass a general banking law, with the following restrictions and requirements, viz:

First-The legislature shall have no power to pass any law sanctioning in any manner, directly, or indirectly, the suspension of specie payments by any person, association or corporation issuing bank notes of any descrip tion.

Second.-The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security in United States stock or State stocks for the redemption of the same in specie; and in case of a depreciation of said stocks, or any part thereof, to the amount of ten per cent or more on the dollar, the bank or banks owning said stocks shall be required to make up said deficiency by additional stocks.

Third-The stockholders in any corporation and joint association for banking purposes, issuing bank notes, shall be individually liable in an amount equal to double the amount of stock owned by them for all the debts of such corporation or association; and such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

Fourth-In case of the insolvency of any bank or banking association, the bill holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

Fifth-Any general banking law which may be passed in accordance with this Article shall provide for recording the names of all stockholders in such corporation, the amount of stock held by each, the time of transfer, and to who m transferred.

COMMENT: Federal law now prohibits private banks from issuing paper money. Most of this section dealt with the failure of private banks which had issued paper money. Two provisions encompass substantive change. Repeal of the first sentence will make only a majority vote, not a 2/3 vote, necessary to amend the general banking law. Repeal of the final paragraph would make recording of the names of stockholders in a banking corporation subject to regulation by law, rather than constitutional regulation. Similar wording is provided under the corporation laws.

ARTICLE IX Sec. 14(b)

COUNTY, CITY OR TOWNSHIP AID TO RAILROADS LIMITED. Sec. 14(b). "

COMMENT: Revisor's comment as published in Minnesota Statutes is: "Appears to be superseded by Section 15."

ARTICLE IX Sec. 16

STATE ROAD AND BRIDGE FUND. Sec. 16.

COMMENT: Revisor's comment as published in Minnesota Statutes is: "Superseded by Article XVI as adopted November 6,' 1956."

ARTICLE X Sec. 1

CORPORATION FOR GENERAL PURPOSES. Section 1. The term "Corporation" as used in this Article, shall be construed to include all associations and joint stock companies having any of the powers and privileges not possessed by individuals or partnerships, except such as embrace banking privileges and all corporations shall have the right to sue, and shall be liable to be sued in all courts in like manner as natural persons.

Sec. 2

NOT TO BE CREATED BY SPECIAL ACT. Sec. 2. No corporation shall be formed under special acts, except for municipal purposes.

Sec. 3

LIABILITY OF STOCKHOLDERS. Sec. 3. The legislature shall have power from time to time to provide for limit and otherwise regulate the liability of stockholders or members of corporations and cooperative corporations or associations, however organized.

COMMENT: The legislature has general power to create corporations and regulate the liability of their stockholders. Sec.2 of this Article is covered by Article XII Sec.1, of the proposed Report which prohibits creating private corporations by special act.

ARTICLE XI Sec. 5

EXISTING LAWS AND CHARTERS. Sec. 5. Existing laws and charters, valid when adopted shall continue in effect until amended or repealed in accordance with this article.

COMMENT: This local government savings clause has served its purpose and may now be eliminated.

ARTICLE XV Sec. 2

RESIDENTS ON INDIAN LANDS. Sec. 2. Persons residing on Indian lands within the State shall enjoy all rights and privileges of citizens, as though they lived in any other portion of the State, and shall be subject to taxation.

ARTICLE XV Sec.5

STATE PRISON LOCATION. Sec.5. The territorial prison, as located under existing laws, shall, after the adoption of this Constitution, be and remain one of the state prisons of the State of Minnesota.

COMMENT: The old territorial prison north of Stillwater has been replaced by the new state prison south of Stillwater in Bayport. This section is thus obsolete.

COMMENT: The Committee obtained a memorandum from Stan G. Ulrich, a student at the University law school, which discloses that this section was intended for the benefit of white traders living on Indian lands. We conclude it was unnecessary at its inception and remains a nullity because of the equal protection clause.

THE FOLLOWING SECTIONS ARE OLD-FASHIONED, GENERAL REPEALER PROVISIONS TO THE EXTENT THEY EVER HAD ANY SUBSTANTIVE UTILITY, WHICH IS UNLIKELY, THEIR PURPOSE HAS BEEN SERVED AND THEY MAY BE DELETED FROM THE CONSTITUTION.

ARTICLE XVII Sec. 2

Sec. 2. Any and all provisions of the constitution of the state of Minnesota inconsistent with the provisions of this article, are hereby repealed, so far, but only so far, as the same prohibit or limit the power of the legislature to enact laws authorizing or permitting the doing of the things hereinbefore authorized.

ARTICLE XVIII Sec. 2

Sec. 2. Any and all provisions of the constitution of the state of Minnesota, inconsistent with the provisions of this article, are hereby repealed, so far, but only so far, as the same prohibit or limit the power of the legislature to enact laws authorizing or permitting the doing of the things hereinbefore authorized.

ARTICLE XIX Sec. 5

Sec. 5. Any and all provisions of the Constitution of the State of Minnesota inconsistent with the provisions of this article are hereby repealed, so far, but only so far, as the same prohibit or limit the power of the legislature to enact laws authorizing or permitting the doing of the things hereinbefore authorized.

ARTICLE XX Sec. 2

Sec. 2. Any and all provisions of the Constitution of the State of Minnesota inconsistent with the provisions of this article are hereby repealed, so far, but only so far, as the same prohibit or limit the power of the Legislature to enact laws authorizing or permitting the doing of the things hereinbefore authorized.

ARTICLE XVI Sec. 13

Supersedure; repeal of inconsistent provisions. Sec.13. Article XVI and Article IX, section 16, are hereby superseded in their entirety; and any and all provisions of the constitution of the State of Minnesota inconsistent herewith are repealed so far but only so far as the same prohibit or limit the power of the legislature to enact laws authorizing or permitting the doing of the things hereinbefore authorized.

Effective date. Sec. 14. This article shall take effect on the first day of July, 1957.