MINNESOTA CONSTITUTIONAL STUDY COMMISSION

# FINAL REPORT AND COMMITTEE REPORTS

MINNESOTA CONSTITUTIONAL STUDY COMMISSION

# FINAL REPORT

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# FINAL REPORT

February, 1973

# AN ACT

**Relating to the legislature; establishing certain interim study commissions; appropriating money.**

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

Section 1. * * * * *

Section 2. * * * * *

Section 3. Subdivision 1. (CONSTITUTIONAL STUDY COMMISSION.) A commission of 21 members is created consisting of six members of the house of representatives appointed by the speaker, six members of the senate appointed by the committee on committees, one person appointed by the chief justice of the supreme court and eight interested citizens, including the chairman, appointed by the governor.

Subd. 2. (SCOPE OF STUDY.) The commission shall study the Minnesota Constitution, other revised state constitutions and studies and documents relating to constitutional revision, and propose such constitutional revisions and a revised format for a new Minnesota constitution as may appear necessary, in preparation for a constitutional convention if called or as a basis for making further amendments to the present constitution. It shall consider the constitution in relation to political, economic and social changes. It shall report to the governor, the legislature and the chief justice on November 15, 1972, recommending such procedures as it may deem necessary and proper to effectuate its recommendations.

Subd. 3. (SUBCOMMITTEES; HEARINGS; WITNESSES.) The commission may appoint committees made up of citizens of the state to deal with particular problems or phases of its study, but there will be at least three members of the commission on each committee. The commission and its committees may hold hearings at the times and places as convenient for the purpose of taking evidence and testimony to effectuate the purposes of this act, and for those purposes the commission and its committees may issue subpoenas. In the case of contumacy or refusal to obey a subpoena issued under the authority hereof, the district court in the county where the refusal or contumacy occurred may upon complaint of the commission by its chairman punish as for contempt the person guilty thereof. Witnesses shall be paid the fees and mileage required to be paid to witnesses in civil actions in district court, but fees need not be paid in advance unless ordered by the commission or by the committee issuing the subpoena.

Subd. 4. (EXPENSES PAID.) Members of the commission and its committees will serve without compensation but shall be allowed and paid their actual traveling and other expenses necessarily incurred in the performance of their duties as provided for state employees. The commission may employ expert clerical, legal and other professional aid and assistance; and may purchase stationery and other supplies; and do all things reasonably necessary and convenient in carrying out the purposes of this act.

Subd. 5. (APPROPRIATION.) $25,000 is appropriated from the general fund to the commission for the purposes of this act. Expenses of the commission shall be approved by the chairman or another member as the rules of the commission provide and paid in the same manner that other state expenses are paid.

Sec. 4. * * * * *

# MINNESOTA CONSTITUTIONAL STUDY COMMISSION

G-19E Administration Building/St. Paul, Minnesota 55155

Senators and Representatives of the Legislature
Governor Wendell R. Anderson
Chief Justice Oscar R. Knutson

The Constitutional Study Commission takes pleasure in transmitting herewith a copy of its report as required by Chapter 806, Laws of Minnesota, 1971.

After a careful examination of Minnesota's 115-year-old Constitution, the Constitutional Study Commission generally concluded that the original document as amended since adoption is an adequate statement of the relationship between the people of this State and their government. This overall reaction was further confirmed by examination of the constitutions of other states, many of which are cluttered with an alarming amount of detail which Minnesota largely, and more wisely, leaves to the discretion of the Legislature.

No state's constitution is perfect, however, and Minnesota's Constitution is no exception. As a result, we are herein submitting our recommendations for many substantive changes, for a revised constitutional format, and for a strategy for implementing our recommendations in a phased and orderly manner over the next few years.

It must be emphasized that the following recommendations embody only a few of the many constitutional amendments suggested by this Commission for future submission to the voters. It must also be emphasized that many aspects of Minnesota's Constitution have not been exhaustively studied by this Commission. Our recommendations identify many problems which will need careful review by a future study group.

The Constitutional Study Commission recommends that the 1973 Legislature implement the following suggestions on the method of constitutional change and consider the following amendments for inclusion on the 1974 ballot.

*Minnesota's Constitution should be revised by a series of comprehensive amendments to be submitted in a phased and orderly manner over the next few elections. (See pages 10 and 13.)*

*The Legislature should authorize the creation of another constitutional study commission, adequately staffed and financed, to continue an in-depth study of Minnesota's Constitution and recommend further revisions to future legislatures. (See pages 11 and 13.)*

As priorities for action by the 1973 Legislature, the 1972 Constitutional Study Commission recommends five constitutional amendments:

*(1) A revised constitutional structure for Minnesota, deleting obsolete and inconsequential provisions, clarifying and modernizing the language, and reorganizing logically related provisions, thus providing a well-structured and coherent document that would facilitate orderly revision. (See page 14.)*

*(2) A "Gateway Amendment" which would open the door to thorough-going reform by the amendment route. This gateway amendment would ease the difficult ratification majority of our Constitution, allow limited citizen initiative on the legislative article, and provide for a special election on amendments by a two-thirds legislative vote. The gateway amendment would also relax the requisites for holding a constitutional convention by lowering the legislative majority needed to submit the call and the voter majority needed to ratify the call. (See pages 29-32.)*

*(3) An amendment to the reapportionment sections of the legislative article which would set up standards for redistricting and remove the reapportioning power from the Legislature to a bipartisan Districting Commission of 4 legislative and 9 non-legislative members. (See pages 17-19.)*

*(4) An amendment to the finance article which would allow for a "piggyback income tax" system by permitting the State to levy taxes computed as a percentage of federal taxes. (See page 26.)*

*(5) An amendment repealing the gross earnings tax paid by railroads in lieu of other taxes, thus allowing the Legislature to set the form and rate of taxation on railroads as it does for other industries. (See page 28.)*

Because of the nature of constitutional revision, the Constitutional Study Commission is hopeful that, with your leadership and the continuing efforts of the citizens of our State, the recommendations proposed by this Commission will begin to be implemented by the 1973 Legislature. With that kind of dedicated effort, we are convinced that Minnesota will have a Constitution which will contribute markedly to the responsible and responsive state government which its citizens desire and deserve.

Respectfully submitted,

ELMER L. ANDERSEN, Chairman

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# SUMMARY OF RECOMMENDATIONS OF THE CONSTITUTIONAL STUDY COMMISSION

(The following summary of Commission action on its eleven committee reports is arranged in the order most closely approximating that of the present Constitution.)

The Constitutional Study Commission recommends that Minnesota's Constitution be updated and improved by means of a comprehensive series of amendments submitted in an orderly manner over a number of elections. The present Commission recommends that it be succeeded by another study commission, which would advise succeeding legislatures on the content and priority of future amendments. (See pages 13 and 14.)

In order that constitutional improvement be facilitated, the Commission recommends the adoption of a Gateway Amendment, easing Minnesota's difficult amending process. The contents of this amendment are summarized below and discussed on pages 29 to 32. (Draft language constitutes Appendix G of this report.)

In order that all future amendments can be fitted into a coherent, clear, well-structured document, the Commission recommends the adoption of the revised constitutional framework summarized below and discussed on page 14. (Draft language constitutes Appendix C of this report.)

Other amendments recommended for submission on the 1974 ballot are starred in the presentation below.

**Revised Constitutional Format**

| | |
|---|---|
| Constitutional Change | * By stylistic changes, reordering of related sections, the deletion of obsolete, redundant and unnecessary verbiage, the present constitutional provisions can be clarified; comprehensibility and coherence of the document improved; the number of words reduced by about one-third; and the number of articles reduced from 21 to 14. Recommendations do not make any consequential changes in the legal effect of the document (p. 14; amendment text, p. 43) |

**Bill of Rights (Article I)**

| | |
|---|---|
| Constitutional Change | Addition of a section on due process and equal protection of the laws (p. 15) |
| | Addition of a section guaranteeing the freedom of assembly (p. 15) |
| Statutory Change | Implementation of the new due process and equal protection section by (1) protecting groups suffering discrimination and (2) guaranteeing the individual access to information on himself collected by public or private agencies (p. 15) |
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| | |
|---|---|
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| | Authorization for revenue bills to originate in either House or Senate (p. 16) |
| | * *Changes in reapportionment sections* (amendment text, p. 52): |
| | Explicit provision that the Senate be elected after each new districting and thereafter for four years until the next districting (p. 16) |
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* Recommended by the Commission for inclusion on the 1974 ballot.

# INTRODUCTION

To amend a constitution — or replace it with a new one — requires the participation of both legislators and citizens.

In most states, including Minnesota, only the legislature can *initiate* changes; in 14 states, either the legislature or the citizens can do so. In all states, only the citizens can *adopt* these changes.

In Minnesota, as we shall see below, extraordinary citizen interest is required to effect constitutional revision.

It is for this reason that the Constitutional Study Commission is addressing its report to the people of Minnesota as well as to the 1973 Legislature. The 12 legislative and nine non-legislative members of the Commission are convinced that with earlier citizen input, constitutional amendments would be more carefully selected for ballot submission by the Legislature, more thoughtfully drafted in committee, and more intelligently understood in the voting booth.

If the recommendations of the Constitutional Study Commission are adopted by the 1973 Legislature, Minnesota will be committed to a more intensive and comprehensive process of constitutional revision than at any time in its history. This process should be both more interesting and more successful if Minnesotans refresh their memories about the proper role of a constitution, the history of our State Constitution and the changes we have made in it, then discuss the changes still needed and the best way to make them.

Section One of this report gives background information on Minnesota's constitutional history, from the beginning of statehood to the appointment of the Constitutional Study Commission of 1972. The two different ways in which Minnesota has amended its Constitution, and the results of these two widely varying approaches, are given special attention in this section.

Section Two reviews the different ways in which the Minnesota Constitution could be revised — by constitutional convention, by piecemeal amendments, or by a variation of the amendment process being used in many states. This section gives the arguments for and against each of the three alternatives and the Commission's reasoning for its choice of the third method—commonly known as phased, comprehensive revision.

Section Three summarizes the work of the Commission's 11 study committees, recommending specific constitutional changes to be made by amendment; identifying constitutional provisions which, after careful consideration, we feel should be left as they are; suggesting some important changes which we believe are better suited to statutory than to constitutional treatment; and designating areas for further study.

Section Four discusses the changes which the Constitutional Study Commission is suggesting for priority action by the 1973 Legislature.

The appendixes (1) show how Minnesota's Constitution has been improved since the 1948 study commission made its report; (2) outline the uses and composition of constitutional commissions in other states; and (3) give the language of the five constitutional amendments which the Commission advocates be placed on the 1974 ballot.

All of the final decisions of the Commission are contained in this report. However, the mimeographed reports of its study committees, available in the Commission office, give much greater detail on the arguments for and against the changes finally adopted.

# SECTION ONE

# MINNESOTA'S CONSTITUTION: ITS HISTORY AND ITS FUTURE

## NATURE AND PURPOSE OF A CONSTITUTION

It is quite possible for a democratic society to function efficiently without a written constitution. Great Britain has none, nor do the member states of many federations, including most Canadian provinces.

In America, however, the written constitution has a long and honored history. Still aboard ship, ten days before landing on Plymouth Rock, the Pilgrims welded themselves into a "civil Body Politick" through a document known as the Mayflower Compact and signed by all male passengers, in which they agreed to abide by the majority decision as to "just and equal laws."

Two months before the Declaration of Independence, the Continental Congress further hallowed this tradition by urging the 13 revolting colonies to "adopt such governments, as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents."

The colonies promptly responded by turning their royal charters into constitutions or by adopting new documents. Action was taken by the colonial assemblies or by conventions called by these assemblies, which bodies then proclaimed the documents in force. In 1780 came the first full participation of citizens in the constituent (constitution-making) power. In Massachusetts the people elected delegates to a convention called for the express purpose of drawing up a new constitution. When drafted, the people voted on its adoption.

The pattern was now fully set. As new territories applied for admission to the Union, they were asked by Congress to hold conventions to draft constitutions. The new documents had then to be accepted by the voters and approved by Congress.

Old or new, original or revised, the constitutions of our 50 states have several things in common. Uniformly, they do the following:

1. Establish a general framework of government, providing for an executive, legislative, and judicial branch.

2. Grant the legislature explicit powers in several areas, notably taxing and spending, suffrage and elections, education and relations with local units of government.

3. Prohibit legislative action in several areas of civil rights (bills of rights).

4. Make arrangements to change the existing document.

It is generally conceded that the best of these 50 state constitutions are the oldest, which were modeled on the federal Constitution, and the very newest, those of Alaska and Hawaii. They are brief and confined to basics. They have the outstanding virtue of distinguishing constitutional and statutory law. Constitutional law, being fundamental, is made by the people; statute law is made by the representatives of the people, as and when it is needed.

In the nineteenth century, when most state constitutions were adopted, this distinction between constitutional and statutory law became blurred, even lost. The reason was a prevalent distrust of legislatures. The frontier individualists who assembled to write the new constitutions acted almost like legislative bodies. They wrote long, detailed, statutory-like provisions, hoping to leave little for future lawmakers to decide. They put rigid restrictions on all branches of government, but especially the legislature.

Minnesota's Constitution, having been written in the middle of the nineteenth century, shares these flaws of inflexibility and verbosity. However, many subsequent amendments have improved the workability and the clarity of the document. In assessing the changes still needed to make our Constitution an efficient charter of action, the Constitutional Study Commission was less concerned with perfection of form than with these pragmatic questions:

1. Does the present Constitution *prohibit* a branch of government from doing something it *ought to be permitted to do,* if it so decides?

2. Does the present Constitution *permit* a branch of government to do something it *ought to be prohibited from doing?*

3. Does the present Constitution *permit* a branch of government to do or not to do something it *ought to be required to do?*

When the answer to any of these questions was yes, the Commission has either recommended specific change or asked that future commissions give the matter careful study.

## RECENT CONSTITUTIONAL REFORM IN THE UNITED STATES

In the last twenty years, the United States has been one huge experimental laboratory in constitution-making. To the traditional methods of constitutional convention and separate amendment have been added some ingenious variations and combinations.

Constitutional reform received great impetus in the early 50's from the report of President Eisenhower's Commission on Intergovernmental Relations. In assessing the imbalance between federal and state activity, the Commission laid less blame on federal encroachment than on defaulting state governments:

> Many state constitutions restrict the scope, effectiveness, and adaptability of state and local action. These self-imposed constitutional limitations make it difficult for many states to perform all the services the citizens require . . . The Commission finds a real and pressing need for states to improve their constitutions.[1]

States began responding — quickly, effectively, and in increasing numbers — to the Commission's challenge "to provide for vigorous and responsible government, not forbid it."[2]

Response from legislative bodies was particularly encouraging. In the past, where a rare constitutional convention was held or major revision otherwise achieved, the push came from the citizens — resistance being the chief legislative input. But by the beginning of the 70's, the consensus of political scientists could be stated thus: "The last two decades have witnessed the spectacular development of more systematized efforts by state lawmaking bodies to determine the major weaknesses in their constitutional systems and to develop proposals for correcting them."[3]

Between 1950 and 1970, 45 of our 50 states took official action to modernize their constitutions. The process has been an accelerating one, so that between 1966 and 1971 alone, 35 states were so engaged. (Add to these figures from the *Book of States*[4] North Dakota and Montana, which held conventions during 1972.)

Thus Minnesota is one of a handful of states which have not been "officially" engaged in constitutional modernization since 1950. A short look at Minnesota's constitutional history shows us the reason.

## A HISTORY OF CONSTITUTIONAL REVISION IN MINNESOTA

**The Document**—Minnesota's constitutional convention of 1857 was hastily called for a single purpose — to take advantage of a railroad land grant act just passed by Congress and available only to states.[5]

Bitterness between the 59 Republican and 55 Democratic delegates was so deep that they met in a single convention for about two minutes at noon on July 13, 1857. Thereafter, for over a month, two rump conventions met in two adjoining rooms of the same building, drafting two completely different documents for the same state.

Pressed by national party leaders to stop acting like "border ruffians," the conventions interrupted their acrimonious denunciations long enough to each appoint five members to a conference committee. A week later, on August 28, the conferees had somehow fashioned from two partially finished constitutions, at wide variance with each other, a compromise constitution for the new state. This was accepted the next day, almost without discussion, totally without inspection.

A few stubborn delegates refused to affix their names to a document signed by members of the other party. Therefore, 16 copyists worked the night, hastily and by lamplight, to produce two copies, one for Republican, one for Democratic signature. These two documents contain more than 300 differences of spelling, punctuation, and even wording. Since the courts have never decided which is the definitive document, Minnesota has the distinction of being the only state with two official constitutions, both on file at the State Archives.

The miracle is that Minnesota's Constitution is as good as it is, considering both the circumstances of its birth and the nineteenth-century fashion for detailed, restrictive provisions.

Minnesota's Constitution can best be described as "average." In length its 15,864 words place it between Vermont's 5,000 and Louisiana's 236,000. It is not one of the most detailed, but is nevertheless full of statutory directives. It is not one of the most restrictive but could scarcely be called fundamental. It is not as rigid as many but is a far cry from the "self-revising" federal model. It has not needed as much change as the average, but its amendments are still far from sufficient.

**Constitutional Change, 1857 to 1947**—Just how Minnesota's Constitution was to be changed formed the "Great Compromise" of the 1857 conventions. In Minnesota the issue of slavery, which pervaded every aspect of American life in these pre-Civil War days, took the specific form of Negro suffrage. The Republican delegates, described as more idealistic and more radical than their Democratic counterparts, were devoted to two great moral causes — prohibition and abolition.

To gain these ends in the near future, the Republicans accepted almost every article of the Democratic document in exchange for one concession: *The new Constitution would be easy to amend.*

> When the Republican members of the Compromise Committee were forced to accept one article after another in substantially the form proposed by the Democrats, they were thrown back on their confidence that the Republican Party would soon carry the state and if at that time there should be a simple method of amending the constitution they would be able to get popular consent to a series of amendments which would make this Democratic constitution over into one which conformed more nearly to the Republican views. They insisted that the Democrats give them . . . a section which embodied the simplest and easiest way of amending a constitution which had yet been put into effect in any state.[6]

This easy amendment method was: (1) proposal by a simple majority of both houses at one session and (2) ratification by a simple majority of voters at the next election.

This process proved very easy indeed. Even before the new Constitution had been accepted by Congress, two amendments had been proposed by the Legislature and accepted by the people — all quite illegally, of course, but never contested. By 1894 more than 60 amendments had been adopted.

In 1896, concerned about the constant need for amendment, the Legislature asked the voters to approve the calling of a constitutional convention. This question required the difficult majority of all those going to the polls. Many more voters said yes than no, but so many failed to mark their ballots that the convention call was defeated.

Stymied in this attempt to slow down amendments, legislators went to the other extreme of remedy. They proposed to the voters of 1898 that future amendments require the approval of a majority of those voting in the election, not just of those voting on the question.

We have no record of just why the Legislature approved this drastic step. A backward glance would surely have convinced thoughtful legislators that the new ratification majority would make continued improvement of the 1857 document very difficult indeed. Of the 47 amendments accepted by the voters through 1896, 30 would have failed under the majority required by the suggested change. Citation of only a few of these 30 amendments proves that state and local governments in Minnesota would have suffered greatly had the present amending majority been part of the original Constitution: Authorization of special assessments for local improvements; the right of women to vote in school and library elections; prohibition against the use of state funds for sectarian schools; authorization of inheritance taxes and special taxes on iron ore; home rule for municipalities; establishment of a road and bridge fund.

According to Anderson and Lobb's definitive history of our Constitution, the motivation for the change in the amending process was not a disinterested attempt to improve Minnesota's constitutional machinery. "It has been said that the liquor interests promoted this change to prevent the adoption of an amendment prohibiting the liquor traffic."[7] Indeed, this amendment to change the amending process became known as the "brewers' amendment." Ironically, it passed by only 28% of those voting in the election, so by its own terms the amendment would have been disastrously defeated.

The effect of this restrictive amending process was dramatic. From 1857 to 1898 voters had accepted almost three-fourths of submitted changes (72.9%). In the next half century the acceptance rate plummeted to less than one-third (32.5%).

**Constitutional Change from 1947 to the Present—** By 1947 the unmet need for change was giving great impetus to the movement for a second constitutional convention. According to a League of Women Voters review:

> The need for removing restrictions on the executive, the legislative, and the judicial branches had been evident for a number of years. The constitution contained no provisions for home rule for local government and no mandatory provision for reapportionment. Other provisions it did contain were obsolete.[8]

In 1947, the Minnesota Legislature created the Minnesota Constitutional Commission (MCC), composed of eight senators, eight representatives, a member of the Supreme Court and of the administrative branch, and three citizens. They were charged 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" needed to "meet present and probable governmental requirements."

The 1948 report of the MCC considerably exceeded its rather modest instructions to recommend needed changes, "if any." The Commission unanimously recommended major changes in 34 sections, minor changes in another 78, and six new sections. Because the recommended changes were so extensive, the MCC advised that they be made by a constitutional convention.

For several sessions, the calling of a constitutional convention was a hard-fought issue. The movement failed because of the following factors: the difficulty of obtaining the two-thirds vote of both houses necessary to submit the question to the voters; the fact that two of the senators to sign the MCC report became adamant foes of the convention idea; fear of rural legislators that the convention would do something about the long-neglected reapportionment question; and to quote the League of Women Voters again, "the resistance of powerful interest groups and voter apathy."[9]

The Senate Judiciary Committee became the focus of opposition. In 1949, the session after the MCC report was published, the House came within eight votes of the two-thirds necessary for passage, but the Senate Judiciary blocked the bill. In 1955, by which time much public support had been mobilized, League of Women Voters lobbyists counted enough House votes to pass the bill; before that was possible, the Senate Judiciary met in preventive session to kill it. Finally, in 1957, the House passed the convention call by more than two-thirds. The Senate Judiciary "indefinitely postponed" the measure by a nine-to-nine tie, making House passage academic.[10]

To make the convention idea more palatable to legislators, citizen groups worked for a so-called "safe-

guard amendment," which allowed legislators to be convention delegates and which required that 60% of the voters approve a new constitution. The three-to-one majority by which the amendment passed in 1954 was interpreted as a mandate to the Legislature by friends of the convention idea. To legislative foes, the vote was a warning that citizens were not satisfied with their Constitution and that the drive for a convention would continue unless action was taken to improve the document.

**An Era of Amending Success**—In the middle 50's legislative leaders turned their serious attention to constitutional reform. They began framing far-reaching amendments, some of them reshaping entire articles or major portions thereof. By 1959, Professor G. Theodore Mitau, in a ten years' perspective view of the effect of the MCC report, found "significant substantive achievements . . . 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."[11]

Aroused citizen interest resulted in the passage of half of all amendments submitted in the next decade — a marked improvement over the one-third rate of the previous half-century. Interests which had favored improvement by convention — the League of Women Voters, both political parties, bipartisan citizen groups, prominent Minnesotans — all devoted much time, money, and public relations skills in the battle to overcome Minnesota's difficult amending majority.

The new record of success continued throughout the 60's. Of 14 amendments submitted during the next five elections, 11 passed (78%). This record was, however, below the national average for constitutional improvement. During this decade, as we have seen, states were concentrating on their constitutions. Minnesota has been submitting only 25% as many amendments as the average for other states. Moreover, the scope of amendments submitted elsewhere has been wider. Entire articles, packages of articles, even whole constitutions have been proposed and accepted.

Minnesota's efforts toward constitutional reform obviously needed to become both speedier and more significant in scope. With this objective in mind, Governor Wendell Anderson sent a Special Message to the Legislature on March 3, 1971, entitled "A Constitutional Convention: To Meet the Challenge of a New Day."

## GOVERNOR ANDERSON'S SPECIAL MESSAGE ON CONSTITUTIONAL REVISION

In his special message, delivered to the Legislature on March 3, 1971, Governor Wendell R. Anderson emphasized that state government must "reassert its assigned role in the federal system if that system is to function properly in meeting the demands of the 1970's and beyond."

The Governor pointed to four areas in which he considered reform "especially critical."

**Legislative Reform**—Legislative effectiveness would be increased by annual, flexible sessions; reduction in size; and party designation for legislators. The Governor also advocated procedures to distribute the workload more evenly over the session, including an earlier deadline for submission of bills and a final vote on appropriations and tax measures well before the end of the session.

**Total Tax Responsibility for the Legislature**—If special methods of taxing special industries now provided in the Constitution were removed, the Legislature could gear tax assessments to changing circumstances, maintaining maximum flexibility in overall taxation policy.

**Environmental Bill of Rights**—The Governor recommended specific constitutional language to help protect and preserve the wealth of natural resources possessed by our State.

**Reexamination of Dedicated Funds**—In order to give the Legislature "the broadest possible discretion in the appropriation of state funds," review of constitutionally dedicated funds is necessary. This is especially true of the highway trust funds, which are now too inflexibly allocated to meet the State's new and varying transportation needs.

**Method of Revision**—The Governor recommended the calling of a constitutional convention in order that these and other goals might be accomplished in a reasonable time and with the greatest possible citizen input. He also recommended the creation of a constitutional study commission to research and recommend proposals for legislative and citizen examination.

## ACTIVITIES OF THE CONSTITUTIONAL STUDY COMMISSION OF 1972

The 1971 Legislature, rather than submitting the question of calling a constitutional convention to the people, adopted the Governor's recommendation for a constitutional study commission, which would recommend changes to be made either by amendment or by a subsequent convention.

**Enabling Legislation**—The Constitutional Study Commission of 1972 was authorized by Chapter 806, Laws of Minnesota 1971, adopted by the Legislature on June 4, 1971. The statute provided for a commission of 21 members, consisting of six members of the House of Representatives appointed by the Speaker, six members of the Senate appointed by the Committee on Committees, one person appointed by the Chief Justice of the Supreme Court, and eight citizen members including the Chairman, appointed by the Governor.

The Constitutional Study Commission was asked to "study the Minnesota Constitution, other revised state constitutions and studies and documents relating to constitutional revision, and propose such constitutional revisions and a revised format for a new Minnesota Constitution as may appear necessary, in preparation for a constitutional convention if called or as a basis for making further amendments to the present constitution."

Realizing that the State was still operating under its original Constitution of 1857, which had not been thoroughly studied since the MCC report of 1948, the Legislature mandated the Commission to "consider the constitution in relation to political, economic and social changes." The Commission was required to report to the Governor, the Legislature, and the Chief Justice on November 15, 1972, recommending such measures "as it may deem necessary and proper to effectuate its recommendations."

The Commission was empowered to appoint committees, hold hearings and take testimony, employ clerical, legal, and other professional staff and to "do all things reasonably necessary and convenient in carrying out the purposes of this act." A sum of $25,000 was appropriated therefor.

**Membership**—In naming the 21 Commission members, the appointing authorities tried to insure that the body would reflect the varying political, social, and economic viewpoints of all residents of the State. (Membership is listed on page ii.)

Exemplary of the bipartisan spirit which marked the work of the Commission was the appointment by Governor Wendell Anderson of former Governor Elmer L. Andersen as Chairman. Former Governor Andersen brought with him not only his wide experience as chief executive but years of leadership in the drive for constitutional reform, both as a state senator and as a private citizen.

**Initial Organization**—The first meeting of the Constitutional Study Commission was held on October 13, 1971. Governor Wendell R. Anderson made a brief statement pledging the full support of his office in undertaking what he called "an exciting chapter in Minnesota history." Several other distinguished Minnesotans also addressed the Commission at its first meeting, including Dr. Lloyd Short, Chairman of the Constitutional Commission of 1948, State Auditor Rolland F. Hatfield, Attorney General Warren Spannaus, House Speaker Aubrey W. Dirlam and Senate Majority Leader Stanley Holmquist, a member of the Constitutional Commission of 1948.

The Commission immediately proceeded to organizational matters, authorizing the appointment of a steering committee, establishing a monthly meeting schedule, and appointing Mr. David Durenberger to act as the Commission's Executive Secretary. In this capacity he supervised the work of the Commission staff, coordinated the activities of the various study committees and generally assisted Chairman Andersen in the conduct of Commission business.

Mrs. Betty Rosas was hired as the Commission's Office Secretary responsible for the day-to-day administration of the office, arrangements for meetings and hearings in the Capitol complex and outstate, recording and distribution of minutes, and preparation and distribution of reports.

In November and December the Commission and its steering committee adopted a budget, a set of operating policies and procedures, and elected former Governor Karl F. Rolvaag and Mrs. Diana Murphy to serve as vice chairman and secretary of the Commission, respectively.

**Plan of Work**—The Commission established ten study committees to examine portions of the Constitution and recommend needed revisions: Amendment Process, Bill of Rights, Education, Executive Branch, Finance, Intergovernmental Relations and Local Government, Judicial Branch, Legislative Branch, Natural Resources, and Transportation. Commission members were appointed to the various study committees on the basis of expressed preference and expertise. Size of the committees varied from three to five members and each member served on two or three committees.

Early in its work, the Commission also authorized the appointment of a committee on Structure and Form to revise the style, language, and format of the Constitution without making consequential changes, and a Final Report Committee to coordinate the scheduling and writing of the report of the Commission.

Letters of inquiry were sent to more than seven hundred organizations and individuals throughout the State, asking for comments and suggestions to be used by the Commission and its working committees.

Copies of the National Municipal League's *Model State Constitution*, the Report of the 1948 MCC, and the Special Message of Governor Wendell Anderson were initially given to each Commission member and were frequently supplemented by new materials relevant to constitutional reform in other states. The Legislative Reference Library under the supervision of its Director, Raymond C. Lindquist, compiled an extensive bibliography on constitutional revision, collecting in one place all available materials on the subject, so they would be easily accessible to Commission members.

In January, Dr. Samuel Gove of the University of Illinois Institute of Government and Public Affairs and Mr. C. Emerson Murry of the North Dakota Legislative Council addressed the Commission on their experience as directors of constitutional conventions in their states. In May the Commission heard from Mr. John Paulson,

editor of the *Fargo-Moorhead Forum* and a delegate to North Dakota's convention. In October, Judge Bruce W. Sumner, chairman of the California Constitution Revision Commission, discussed with Commission members the success of that state's ten-year constitutional revision effort.

**Research and Public Communication**—Professor Fred Morrison offered his services as Research Director for the Commission, being aided by Professor Alan Freeman and nine University of Minnesota law school students: Mike Glennon, Jon Hammarberg, Michael Hatch, Steven Hedges, Richard Holmstrom, Joseph Hudson, Jim Morrison, Michael Sieben, Stanley Ulrich. These students prepared extensive background reports and research papers for each of the committees. A number of other students from the University, state colleges, and private colleges also prepared excellent research papers for the Commission. Professor Morrison was added to the full-time staff of the Commission for a four-week period during July to assist in the research and preparation of the study committee and Commission reports.

To maximize the involvement of Minnesota citizens in its work, the Commission appointed Mr. Jon Schroeder as Communications Director. He received credit for his work during his last semester at Macalester College and was added to the Commission staff on a full-time basis for four months. Mr. Schroeder was responsible for editing a monthly newsletter, issuing press releases to the news media, and doing research and editorial work on committee reports and the final Commission report.

**Public Hearings**—Beginning in February, 1972, the Commission held a series of five meetings coinciding with public hearings of all study committees. This gave each Commission member an opportunity to hear and discuss the subject matter being considered by committees of which he or she was not a member. One of these meetings was held in Moorhead, where nine study committees held public hearings and Commission members had an opportunity to discuss the recently concluded North Dakota constitutional convention with convention leaders.

In addition to the hearings conducted in conjunction with Commission meetings, each committee held several public hearings and working meetings. In all, more than sixty committee meetings and public hearings were held in Minneapolis, St. Paul, Duluth, Moorhead, Rochester, St. Cloud, Mankato and Marshall, at which public testimony was received from hundreds of organizations and individuals. Additional input was provided through written statements and letters directed to the different study committees.

**Formulation of Recommendations**—On the basis of this research, testimony, correspondence and individual study, the various committees began to formulate specific recommendations for revision of the Minnesota Constitution. Committee reports were prepared and widely circulated to interested individuals and organizations.

In a series of six full-day meetings between July and November, the full Constitutional Study Commission met to consider the recommendations of its ten study committees and the Committee on Structure and Form. Like all other Commission and study committee meetings and hearings, these final meetings were widely publicized, open to press and public, and well attended by both. Recommendations of the various committees were taken up one at a time in the form of more than one hundred separate resolutions. The large majority of committee recommendations were adopted by the full Commission.

These recommendations included proposed constitutional changes of a substantive nature, a proposed new format for the Minnesota Constitution, and a proposed strategy for implementing the Commission's recommendations. All recommendations are detailed in Sections Three and Four of this report, which was approved by the Constitutional Study Commission at its final meeting on December 6, 1972.

Which method of revision would best suit Minnesota's needs underlay all considerations of the Commission, from its beginning meeting to its final decisions. Only after the scope of changes recommended by the study committees became clear could the Commission decide whether they were so extensive as to argue for a single-shot convention revision. Early in its deliberations, however, the Commission began a thoughtful study of the methods employed in other states recently engaged in constitutional reform and tried to decide which kinds of change were most applicable to Minnesota's situation.

Because the method of change is as important as the specifics of change to many Minnesota citizens, especially those who have long favored a constitutional convention, the next section of this report will summarize the available methods, their successes and failures, and their suitability to Minnesota's current needs.

# SECTION TWO

# ALTERNATIVES FOR REVISING MINNESOTA'S CONSTITUTION

All processes of constitutional change have their advantages and disadvantages. The Commission's objective was to choose the method which provided the best opportunity to meet Minnesota's needs at the least possible expense of time, money, effort and possible voter turndown.

## THE CONSTITUTIONAL CONVENTION

This Commission is keenly aware of the great advantages inherent in a citizen convention. In theory, the advantages seem almost overwhelmingly persuasive:

1. Only a complete rewrite job can produce a brief, flexible, fundamental, organic document.

2. A constitutional convention allows the whole backlog of state needs to be met in a single election.

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

This is why delegates and citizens in states where a convention-proposed document has been defeated unite in saying: We would do it all over again.

Diluting the potency of these arguments were some very pragmatic considerations weighing against a constitutional convention in Minnesota:

1. Only a deep and widespread conviction among citizens that they need and want a convention will guarantee a successful vote on the call, good delegate selection, meaningful debates and a favorable vote on the new document. This interest is not evident in this State at this time. The Commission heard no public testimony for a convention. No citizen groups are now pushing such an effort. Even the League of Women Voters, which carried the burden of the fight in the 50's, has dropped a convention from its program and substituted improvements in specific articles. To quote a League publication of 1967:

> By 1961 the movement for a convention had lost momentum and in the 1961 Legislature the League did not even have an opportunity to testify for a convention.
>
> Recent experience seems to indicate that a crisis is a necessary prerequisite for calling a convention. Michigan's convention in 1962 resulted from the serious financial stalemate between Governor Williams and the Republican Legislature and the near bankruptcy of the state. In Connecticut, New Jersey, New York, Tennessee and Rhode Island reapportionment has been the precipitating factor. The crisis atmosphere seems necessary not only to secure legislative approval but also to win approval of the people.[12]

2. Minnesota's present constitution makes the calling of a convention and the approval of the resulting document very difficult. Only with the highest level of citizen interest could these barriers be overcome. The Commission is recommending, as will be seen below, that we ease the constitutional difficulties in the way of submitting the call, approving the call, and ratifying the new document. Therefore, should future citizens and legislators see the need for a convention, that end will hopefully be more achievable than at present.

3. The results of recent constitutional conventions have not been encouraging. In ten states where new or substantially new constitutions were submitted for approval between 1966 and the present, only four were approved.

| Constitutions Approved | Constitutions Rejected |
|---|---|
| Hawaii | Arkansas |
| Illinois | Maryland |
| Montana | New Mexico |
| Pennsylvania | 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.

The Commission is aware that the method of submission has a lot to do with acceptance or rejection of a new constitution. Three of the four rejected documents were submitted as a single package. All of the adopted constitutions separated out controversial issues.

4. Convention deliberations have seldom resulted in a basic and organic document. The best, the Maryland document, praised by press and political scientists as a masterpiece, was disastrously defeated at the polls.

The League of Women Voters finds that many of the arguments for a constitutional convention do not stand up when practically tested in the convention situation: Conventions have proved highly partisan in many states; their make-up is quite similar to that of the legislature, not of the higher caliber posited by political scientists; the sheer technical details of drafting a good charter are formidable, no matter who does it; and "recent conventions have not been active in areas of legislative reform that would be difficult for legislators

to do themselves, such as drastically reducing the size of the bodies or adopting unicameralism."[13]

A well-known political scientist observes "that the convention rarely rises above the legislature in quality and experience of its membership and that pressure groups and political parties have significant influence on its deliberations."[14]

5. Although the Commission was impressed by statements of delegates to unsuccessful conventions, such as the one in North Dakota, that the failure was worth all the work, we are not sure that Minnesota would reap similar benefit. These delegates point to (a) public education on basic issues of governmental policy aroused by convention debate and the pre-vote discussions; and (b) expectations that recommended reforms will be submitted as amendments in years to come, and eventually accepted.

Minnesota's situation is rather different. In the first place, citizen interest in political and governmental processes is very high in Minnesota. Secondly, Minnesota has already profited greatly from the recommendations that the 1948 MCC hoped would be made by a constitutional convention. Appendix A on page 40 shows that the great proportion of major MCC proposals have been adopted as separate amendments.

## PIECEMEAL AMENDMENTS

The traditional alternative to a constitutional convention is submission, at each general election, of one, two, a few amendments. This procedure is often referred to as the "scissors-and-pastepot approach."

This is the path Minnesota has followed since 1857. Practical advantages of the separate amendment approach are obvious. It is simple. It puts little stress on the Legislature. It costs little. Controversy is kept to a minimum.

Disadvantages are serious:

1. The process is regrettably slow. Because amendments are difficult to pass in Minnesota, legislators hesitate to submit more than the few amendments on which voters can be widely informed and persuaded.

2. There is at present no orderly, thoughtful process for deciding which amendments should go on the ballot. Of the dozens of amendments introduced and getting preliminary approval each session, a final few issue from the rules committees in the closing days or hours and are adopted almost as a formality.

3. Amendments are usually narrow in scope. Take a 1972 example. Why waste a lot of time convincing the voters that the governor and lieutenant governor should be elected on the same ticket when the role of all the constitutional officers needs exploration by Legislature and voter?

4. Each election sees pressure for essentially non-constitutional issues. The Vietnam veterans bonus of 1972, quite regardless of its merits, was scarcely a basic issue. Nevertheless, it had to have voter approval and thus cut down the number of constitutionally significant issues that could have gone on the ballot.

5. The public-spirited citizens groups which have, in recent years, been responsible for adoption of good amendments, are showing signs of battle fatigue. This biennial fight takes a lot of time, a lot of money, and a lot of effort. Without the enthusiastic work of good government groups, of both political parties, of citizens with prestigious names, amendments will simply not pass. This becomes increasingly true as more municipalities install voting machines, which make amendments more difficult to spot than when printed on separate ballots.

## TWO MIDDLE WAYS

During the last two decades, two innovative variations on the time-honored methods of convention and amendment have made their appearance.

1. **The Legislative Convention**—The speedier of these two innovations is preparation of a new constitution by the legislature. In Florida, the voters empowered the legislature to act as a revising convention. In 1968 three amendments, constituting a complete rewrite, were passed by the voters. In 1970, the Delaware legislature gave the first of two approvals to a new document drafted by a constitutional study commission. (The second approval was declared unconstitutional on the grounds of a technicality.) In 1970, the voters in Virginia approved a new constitution which had been drafted by a study commission, then revised and submitted by the legislature.

This method of complete revision by the legislature seems ill-suited to a legislature with limited sessions. It is also less in the Minnesota tradition of independence and of citizen involvement than either a convention or separate amendments. It would, of course, necessitate a constitutional amendment.

2. **Phased Amendment Revision**—The second innovation of recent years is commonly described as "comprehensive, phased revision." Briefly, this is how it works:

A study commission, appointed by the legislature and usually including some lawmakers, takes a long look at needed changes, researching different areas and preparing draft changes.

The commission assigns priorities to the changes it is suggesting. It recommends for action at the next election amendments which either facilitate future change or are most badly needed for effective state government. The commission may also recommend

amendments to be submitted at subsequent elections. More frequently, since it has not had time to carefully research all articles, it suggests that these areas be more fully explored by a subsequent study commission.

The commission report is then transmitted to the legislature, which normally revises the commission's recommendations. Changes are then submitted to the voters, either as a package or, more frequently, as separate amendments.

The study commission, usually reconstituted to some extent over the period of revision, stays on the job to consult with the legislature, help pass the amendments, and work on changes yet to be made.

This method of phased, orderly, comprehensive revision has worked, or is working, in the following ways in many states:

In California, the voters passed a 1962 "gateway amendment," easing the way to speedy amendment revisions. In 1963 the legislature appointed a Constitution Revision Commission of 50 (later 70) members, which worked for three years before submitting to the legislature a complete revision of articles dealing with the executive, legislative and judicial branches of government. These measures rewrote approximately one-third of the constitution, deleted 16,000 words and compressed six articles into four. The changes were accepted in 1966 by a majority of 73.7%.

In 1968, California voters turned down a package labeled Proposition One, containing such diverse matters as education, state institutions, local government, corporations and public utilities, land and homestead exemptions, constitutional revision and civil service. Realizing that the voters wanted a chance to exercise discretion, the proposals were separated and passed in the June primary and the November general elections of 1970. In 1971, the commission finished making its recommendations to the legislature.

Thus, with almost ten years of citizen and staff study, with sustained legislative attention and with the assessment of the voters in four elections, California will have earned a substantially new constitution.

In South Carolina a similar study commission has now finished several years' work on its outmoded constitution and has recommended article-by-article substitution spaced over several years. The first step was voter approval of a gateway amendment, allowing a single vote on an entire 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 according to a master plan over the next few elections. In Indiana, in 1970, voters approved three amendments, the first of a series endorsed by a constitutional study commission. Nebraska has substantially changed its constitution over the last three elections, according to recommendations of a study commission. In North Carolina a study commission recommended extensive revision of constitutional language and ten amendments. The editorial changes and four of the amendments were passed in 1970, with the remainder scheduled for upcoming elections.

## CONSTITUTIONAL STUDY COMMISSIONS

In the last two decades, almost every state has been engaged in significant constitutional improvement. Almost uniformly, whether change has been by convention or amendment, the moving force has been a constitutional study commission.

The contribution of such commissions was described thus by W. Brooke Graves in 1960:

> Many states, in recent years, have turned from conventions to constitutional commissions that consist of experts who report to the governor and the legislature and whose handiwork is submitted for popular vote if approved by these political organs of government. The saving in time and expense and the gain in the quality of the work done should commend this new American institutional device to constitution framers as a replacement of the constitutional convention.[15]

The study commission idea began tentatively but rapidly proved itself. In the 12 years between 1938 and 1950, only eight study commissions were appointed (including Minnesota's). But in the five years between 1961 and 1965, 23 commissions were at work; in the next five years, 25.

The range of activity of constitutional commissions is broad. They identify problems, do research, suggest amendments, draft entirely new documents, prepare for constitutional conventions and educate the public before the vote on either a new constitution or amendments.

Almost always, constitutional commissions contain both citizens and legislators, though in varying proportions. Commissions range in size from a few members to 60. They are carefully bipartisan. The legislature and the governor usually cooperate in their appointment. They are supported by legislative appropriations ranging from $2,000 for the biennium in Vermont to $150,000 for a single year in Ohio. (See Appendix B on page 41.)

The criticism of study commissions is not hard to imagine. They are closely tied to the legislature—through legislative membership, legislative appointment of many other members, legislative appropriations, often legislative research aid and final legislative acceptance of commission proposals. They may, therefore, not be independent and innovative enough—recommending only those changes which they think the legislature will accept.

The answer to this criticism is the counter-criticism that constitutional conventions have not been particularly innovative, even in such areas as unicameralism, where complete freedom from the legislature might be expected to allow freer rein. Also, new ideas suggested by commissions have had good reception from legislators when well-reasoned and persuasively followed up.

Study commissions, though not elected, do provide a close link between citizens and lawmakers. The lay members bring important citizen input into legislative decisions. The commission and its subcommittees offer opportunity for citizen testimony and education before the hurried stage of legislative consideration. Commission recommendations alert citizen groups to matters which will be seriously considered in the coming legislative session. And once the amendments have been chosen by the legislature for ballot submission, commission members can provide the voters with useful information.

# SECTION THREE

# RECOMMENDED CHANGES IN MINNESOTA'S CONSTITUTION

Early in the deliberations of the Constitutional Study Commission, its chairman appointed small study committees to review all subject areas in the Minnesota Constitution and recommend needed changes. Committees and their members are listed at the beginning of this report.

These study committees held public hearings and received written testimony; requested and reviewed historical and legal reports from the research staff; compared Minnesota's provisions with those of other states and with the recommendations of other Minnesota study committees; and held several discussion meetings before adopting a final report.

These committee reports were in the hands of Commission members, the press, and all individuals and organizations who had asked to receive them well before the entire Commission voted on their recommendations.

The full Commission discussed and voted separately on each recommendation of each study committee.*

The recommendations accepted by the Commission follow. The arrangement approximates the order of the present Constitution. The discussion which follows each recommendation is a short summary of the study committee's explanation. The full committee thinking is contained in the eleven mimeographed study reports available in the Commission office.

## RECOMMENDATIONS ON METHOD OF REVISION

The provisions for revising Minnesota's Constitution are contained in Article XIV. They specify, as do similar provisions of other state constitutions, that the original document may be changed in one of two ways:

**By a constitutional convention of elected citizen delegates:** The first step in this process is up to the Legislature. A two-thirds majority of each House must vote to submit to the people the question of calling a constitutional convention. If the majority of all those voting in the next election cast a yes vote for the proposition, the next Legislature provides for the calling of a convention. Delegates are elected at the next general election. A new or revised document adopted by this convention is submitted at the next general election and is adopted if three-fifths of those voting on the question cast an affirmative ballot.

**By separate amendments:** Amendments to various provisions of the Constitution may be submitted to the voters by a simple majority of both houses of the Legislature. They must be approved at the next general election by "a majority of all electors voting at said election."

Early in its deliberations, the Commission turned its attention to the following basic question:

How should the Commission suggest that the 1973 Legislature implement the constitutional changes it would eventually recommend? By a constitutional convention or, as in the past, by separate amendments?

The following three recommendations contain the Commission's considered judgment as to the *procedures* which Minnesota should follow in revising its Constitution.

**1. The Commission's recommendations for change would be best achieved through a process known as "phased, comprehensive revision" — or a series of separate, but coordinated amendments planned for submission over several elections.**

In recent years more and more states have been following this "middle way" to constitutional revision. This method is basically the separate amendment approach, allowing the citizen a vote on each question submitted, but adding some of the advantages of a convention — namely, a comprehensive view of the entire document and speedier improvement. A study commission is uniformly involved.

The legislature has in most states accepted, but revised, commission recommendations. The joint result of commission suggestion and legislative refinement has been a substantially improved, often substantially new state constitution, achieved in a number of years comparable to the time required for the convention method of revision.

This recent method of phased, comprehensive revision is orderly. It offers the possibility of thoroughgoing 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. The Commission finds the method highly suitable to Minnesota's need for constitutional improvement.

**2. The Legislature should create another citizen-legislator commission to study the many constitutional provisions not thoroughly reviewed by the present Commission, and to recommend the second and subsequent phases of revision.**

In all states which have employed the speeded-up amendment approach described in Recommendation 1,

*Where the difference in yes and no votes was two or less, the text records the vote.

the Legislature has asked the help of a study commission. A wide and scholarly view of the Constitution is essential if the full scope of needed change is to be appreciated, specific revisions wisely drafted and a scheme of priorities outlined for the next several elections.

Whether Minnesota's new commission should be entirely reconstituted or whether it should contain both holdover and new members is a matter for decision by the 1973 Legislature. Appendix B offers some comparisons with other states on size, membership, duration, appropriations and achievements which the next Legislature might find helpful. In general, it will be seen that Minnesota's present Commission has a higher percentage of legislators than most others. (The average commission has "a majority of legislators, past legislators and lawyers.") The appropriation was fairly modest compared to appropriations in most other states.

**3. In order to facilitate constitutional improvement in Minnesota, the provisions of its amending article need considerable change.**

These changes will be discussed under recommendations on the Amending Process (Article XIV) on pages 29-32.

## RECOMMENDATION ON A REVISED CONSTITUTIONAL FRAMEWORK

The statute authorizing the creation of the Minnesota Constitutional Study Commission specifically mandated the Commission to propose a "revised format" for the Minnesota Constitution in preparation for either a constitutional convention or continued submission of amendments.

Among the letters and testimony submitted to the Commission suggesting revision of the present Minnesota Constitution, the recommendation most often made was "clean it up . . . get rid of the outdated language . . . put the Constitution in language that the average citizen can understand."

With these two considerations in mind, the Commission made one of its first orders of business the creation of a Committee on Structure and Form. This committee's members spent hundreds of hours in drafting and redrafting their report, which was submitted to Commission members, the Revisor of Statutes and several other authorities on Minnesota constitutional law for their consideration. The report was given final approval by the full Commission at its December 6 meeting.

The Commission's recommendations on structure and form would delete obsolete and inconsequential language, correct grammar and stylistic defects, and reorganize constitutional provisions into an order which would produce a more coherent and readable document, all without making any consequential changes in the meaning or interpretation of the present Constitution. The redrafted Constitution includes a reduction in the number of articles from 21 to 14 and in the number of words from 15,864 to 10,297.

**The Commission urges that its recommendations on structure and form be submitted to the voters in a single amendment to be considered at the 1974 election.**

The Commission is placing this amendment early in its revision strategy timetable, so that future amendments may be properly phrased and placed in an orderly, well-structured and clearly written constitutional framework.

The draft of the Minnesota Constitution recommended by the Commission constitutes Appendix C of this report.

## RECOMMENDATIONS ON THE BILL OF RIGHTS

Bills of rights are limitations on the powers of government, defining those rights and liberties which citizens must possess if they are to develop a free and equal society.

Much of the federal Bill of Rights applies to the states because of its incorporation into the Fourteenth Amendment. Nevertheless, constitutional experts generally agree that states should have their own bills of rights, as they all do, and for the following reasons:

A state may well wish to cover civil rights which are not part of the federal Bill of Rights or rights in the federal document which have been held not applicable to the states.

In a federal system, it is 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."[18]

A state court may interpret provisions in a state constitution more broadly than it would federal constitutional provisions.

Since United States constitutional history is always in the process of change, there is no certainty that the rights now applied to the states or covered by the incorporation doctrine of the Fourteenth Amendment will remain unchallenged.

As a society grows more complex, the rights guaranteed by constitutions may need expansion. The social and economic needs and problems of the present day differ greatly from those of the eighteenth and nineteenth centuries when bills of rights were originally drafted.

Although the Constitutional Study Commission found the Minnesota Bill of Rights generally quite satisfactory, the changes which have occurred in the socio-economic conditions of our State in the last 115 years have led to some obsolescence and the need for some additional guarantees.

**1. The Bill of Rights should 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 law nor be denied the equal protection of the laws. The Legislature shall have power to enforce, by appropriate legislation, the provisions of this section."**

(Since the above recommendation is for constitutional language of which the next two recommendations provide statutory implementation, the three will be discussed jointly after Recommendation 3.)

**2. The Legislature should implement the equal rights and due process section, when added to the Constitution, by such legislation as will protect groups which have suffered inequities and discrimination. This legislation should assure due process rights to the mentally ill and mentally retarded and provide protection for all persons regardless of race, religion, sex, national or social origin, physical handicap, or mental illness or mental retardation.**

**3. The Legislature should implement the equal rights and due process section, when added to the Constitution, by laws which will protect the individual's right of access to information collected and preserved relative to him.**

Although Minnesota has a relatively strong civil rights law, it does not, like many states, have an equal rights and due process section in its constitutional Bill of Rights.

While the Commission desired to add to the Constitution the strongest possible kind of guarantees of the basic rights of its citizens, especially those groups which have suffered discrimination, it also wished to avoid adding legislative detail to the Constitution.

For this reason, the Commission decided to frame its equal rights recommendation in general language. The phrase "The Legislature shall have the power to enforce, by appropriate legislation, the provisions of this section" follows the language of the federal Constitution.

By its flexibility, this constitutional language will enable future legislatures to add protection for groups not mentioned in the Commission recommendation and which may in the future be discriminated against. The recommendation was in particular response to the voluminous testimony in regard to the rights of women, persons in state institutions, and the handicapped.

A good example of the kind of right which our fast-paced modern society subjects to encroachment is mentioned in Recommendation 3. In an information-gathering age such as ours, both private and public agencies collect and disseminate information about citizens which may affect their lives, livelihood and future. The Commission urges the Legislature to pass laws that would assure each citizen the right to examine information on himself contained in the files of public or private agencies, also the opportunity to challenge its accuracy.

**4. The Minnesota Constitution should include a specific protection for freedom of assembly.**

The right of assembly is an important one, specified in most state constitutions as well as in the federal document. The history of Minnesota's Constitution recorded by Anderson and Lobb[19] concludes that its omission from our document was probably an oversight of the compromise committee and was not noticed by the adopting conventions because of their having neither printed copies nor time for discussion. The Commission recommends that the right of assembly either be added as a separate section or combined with Section 3.

* * * * *

The addition to the Constitution of a provision relating to the right to bear arms was discussed by both the Bill of Rights Committee and the full Commission. The committee decided that the right does not need state constitutional protection. The right to bear arms of the federal Bill of Rights relates to the militia and has no bearing on state problems, though such a right is found in many state constitutions. To include this right in Minnesota's Constitution might be interpreted as a move to block gun control legislation, which will be under discussion in the coming legislative session. The Commission voted to table the proposal after the Chairman explained on request that the effect of such a vote would be to kill the measure.

The Commission recommends that a future study commission examine Section 12 of Article I, relating to mechanics liens. The attorney general called the attention of the Commission to the fact that some observers feel the mechanics lien provision operates unfairly against the homeowner. While the Legislature has power to regulate the form and notice of such liens, some believe that Section 12 should make notice regulations; others believe that it would be preferable to delete all reference to mechanics liens from the Constitution.

## RECOMMENDATIONS ON THE LEGISLATIVE BRANCH

In mid-1970, the Legislative Evaluation Study of the Citizens Conference on State Legislatures ranked the 50 state legislatures according to their ability to function effectively, to account to the public for their actions, to gather and use information, to avoid undue outside

influence, and to represent the people. Minnesota's Legislature was ranked tenth; only the legislatures of California, New York, Illinois, Florida, Wisconsin, Iowa, Hawaii, Michigan and Nebraska were ranked ahead of it. Since then, the Minnesota Legislature has taken steps to further improve its organization and procedures. While it is generally agreed that Minnesota's Legislature is fairly effective and responsive, there are many areas in which additional improvements may be made.

Because of the limitations of time and resources, the Commission has been unable to study in depth all aspects of Article IV and all the recommendations for improvement made by the Citizens Conference and other interested groups and individuals. Our recommendations deal primarily with some major issues, the resolution of which requires constitutional revision. In some cases, we also recommend action which the Legislature may take under the existing Constitution.

The text of a proposed amendment to those sections of Article IV dealing with reapportionment and special sessions will be found in Appendix D.

**1. Article IV, Sec. 1 should be amended to provide explicitly that the entire Senate be elected at the first general election after each new districting and then for four-year terms until another districting.**

Under this provision the senators elected in the year in which the federal census is taken would serve only a two-year term. This recommendation makes no change in the way existing constitutional provisions have been construed by the courts. It merely makes the point explicit. The Commission recognizes that this means that senatorial elections will not always take place when the Governor is also being chosen. We think it more important that the Senate, like the House, reflect population shifts in the State as rapidly as practicable and that each senatorial district be composed of whole, existing representative districts. This provision eliminates any federal constitutional question that might be raised because of a delay in electing senators following a new federal census and legislative districting.

**2. There should be no change in Article IV, Sec. 1, insofar as it authorizes the Legislature to meet in regular session in each biennium at the times prescribed by law for not exceeding a total of 120 legislative days.**

The voters at the 1972 general election approved an amendment to Article IV, Sec. 1 proposed by the 1971 Legislature. Previously, Article IV, Sec. 1 authorized the Legislature to meet in regular session only in each odd-numbered year and then only for a term not exceeding 120 legislative days. The Supreme Court of Minnesota held that a regular session is limited to 120 calendar days, exclusive of Sundays, from the date when the Legislature convenes. Under the revised Article IV, Sec. 1, the Legislature may meet in regular session in each biennium at the times prescribed by law, for not exceeding a total of 120 legislative days. The phrase "legislative day" may also be defined by law. The Legislature, however, is not permitted to meet in regular session, or any adjournment thereof, after the first Monday following the third Saturday in May of any year.

The Commission is of the view that the Constitution should not prohibit a Legislature from meeting whenever the business at hand requires it, nor should it compel the Legislature to adjourn until that business is completed in an orderly and deliberative manner.

The revised Article IV, Sec. 1 is a modest but significant improvement over the pre-existing constitutional provision. We question the wisdom of prohibiting the Legislature from meeting after the first Monday following the third Saturday in May of any year. But we think any further consideration of the length and frequency of legislative sessions should await experience under the new constitutional provision.

**3. Article IV, Sec. 1 should be amended to empower the Legislature to call itself into special session upon the petition of two-thirds of the members of each house.**

The recommended change, of course, will not alter the Governor's authority to call the Legislature into special session.

**4. Article IV, Sec. 2 should be retained insofar as it authorizes the Legislature to determine the number of members who shall compose each house.**

Minnesota, which ranks nineteenth among the states in population and fourteenth in land area, presently has the largest Senate in the nation (67 members) and the tenth largest House of Representatives (134 members).

The Commission agrees that the Legislature should not become larger than it is now, but does not favor setting the present size of the Legislature as a constitutional limit for fear that this size may also become the minimum. The Commission therefore recommends retention of the existing constitutional provision which authorizes the Legislature to determine its size from time to time. It recognizes that it may be unrealistic to expect the Legislature to cut its size. Accordingly, it recommends that provision be made for use of the popular initiative to reduce the size of the Legislature. (See Recommendation 2 on page 30.)

**5. Article IV, Sec. 10 should be changed to allow either house of the Legislature to initiate revenue measures.**

Because the House was regarded as a more popular body than the Senate when the Constitution was originally adopted, it was provided that all revenue bills must originate in the House. This assumption is no

longer true. As a practical matter, the Senate has found ways to originate revenue measures without offending the letter of the constitutional restriction. The Commission sees no contemporary reason why this power not be constitutionally explicit.

**6. The authority now lodged by Article IV, Sec. 23 in the Legislature to draw new congressional and state legislative districts after each federal census should be taken away from the Legislature and imposed upon a Districting Commission composed as suggested in Recommendation 7 and following the standards of Recommendation 8.***

Minnesota's 1972 experience with legislative districting made necessary by the 1970 census reveals the inadequacy of the existing constitutional provisions, which entrust the task to the Legislature subject to the veto of the Governor. The political impact of redistricting upon the contending political parties and upon incumbent legislators makes it unwise to expect the Legislature to accomplish this task fairly. This is especially the case with state legislative districting, but is also true of congressional districting. Whenever the legislative and executive branches of government are controlled by different political parties, the present process is almost guaranteed to produce stalemate. When both the legislative and executive branches of government are controlled by the same political party, there is danger that the redistricting will be unfair to the party out of power.

In the reapportionments of 1959, 1965 and 1971, it was necessary for the courts to intervene in the State's political affairs. The Commission thinks it wise to minimize the participation of federal and state courts in political matters so as not to risk jeopardizing the trust and confidence that must be reposed in courts when they perform their other judicial functions. For all these reasons, the Commission recommends that the task of redistricting be taken away from the Legislature and given to a commission. This recommendation is not without precedent. Ten states now impose the duty of redistricting upon the Legislature itself in the first instance but provide an alternative method for redistricting if the Legislature fails to perform this duty. Nine states bypass the Legislature entirely and provide for redistricting by some agency other than the Legislature — usually a commission.

**7. The Districting Commission created under proposed Article IV, Sec. 24 should consist of 13 members — the speaker and minority leader of the House of Representatives, the majority and minority leaders of the Senate, or representatives and senators appointed by these legislative leaders to take their place; two members appointed by the Governor; two members appointed by the state executive committee of each political party, other than that to which the Governor belongs, whose candidate for Governor received 20 percent or more of the votes at the most recent gubernatorial election; and the remaining members unanimously elected by the commission members so appointed. A majority of the entire membership of the Supreme Court should make any appointment necessary to complete the commission's membership if any selecting authority fails to appoint its quota of members. No congressman or state legislator, other than the legislative leaders named to the commission by virtue of their office or the legislators appointed by them to take their place, shall be eligible to serve on the commission. In making their appointments, the selecting authorities should give due consideration to representing the various geographical areas of the State.**

The Districting Commission we recommend would be neither nonpartisan nor strictly bipartisan. Because redistricting cannot be entirely insulated from political considerations, we recommend involving the Governor, the legislative leadership, and the political parties in the appointment of commission members. This will assure that political realities and varying political views are taken into account. Because judges should be removed from political considerations, we oppose giving any group of judges responsibility for redistricting, except as a final resort.

The balance of power in the commission would be held by the five citizen members, who must be agreed upon unanimously by the eight politically oriented members. In the absence of unanimity, the state Supreme Court would select these citizen members.

**8. Article IV, Sec. 23 should be revised to set forth districting standards to guide the Districting Commission. The following standards are proposed: (1) there are to be no multi-member electoral districts; (2) each district is to be composed of compact and contiguous territory and be as nearly equal in population as is practicable; (3) no representative district is to be divided in the formation of a senate district; and (4) unless absolutely necessary to meet the other standards set forth, no county, city, town, township or ward shall be divided in forming a district.**

Standards (2) and (3) are now set forth in different parts of Article IV. We are suggesting that districts be "compact" rather than "convenient" as required by existing Section 24. Instead of the language of existing Section 2, that "representation in both houses shall be apportioned equally throughout the different sections of the State, in proportion to the population thereof," we are proposing the clearer and simpler phrase that each district be "as nearly equal in population as is practicable."

*Senators Robert J. Brown and Jack Davies dissent in part from this recommendation. Their statement follows the Commission's majority report.

We propose single-member districts in House as well as Senate, since multi-member districts create the possibility of submerging the interests of racial, ethnic, economic or political minorities.

Our proposed prohibition against dividing political subdivisions in the creation of new districts is intended to safeguard against gerrymandering. However, the danger of gerrymandering will be lessened primarily by entrusting the districting function to a commission constituted as we recommend.

**9. The concurrence of eight members of the Districting Commission should be required to approve legislative and congressional districting plans.**

Under this recommendation, if the original eight politically oriented members 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. This requirement is still another safeguard against the danger of gerrymandering and an assurance of fair representation.

**10. The state Supreme Court should be given exclusive original jurisdiction to review the Districting Commission's final published plans at the behest of any qualified voter. It should be empowered to modify any districting plan so that it complies with constitutional requirements and to direct the Districting Commission to adopt the modified plan.**

It is hoped that such a constitutional provision will induce the federal courts not to intervene until the state Supreme Court is finished with its review. Of course, the United States Supreme Court will be the ultimate arbiter of the validity under the federal Constitution of any Commission plan approved by the state Supreme Court.

**11. If the Districting Commission is unable to agree upon a districting plan, the task of districting should be imposed upon the state Supreme Court. The state Supreme Court should be required to work with the plan submitted by one, or a group, of the commission members which most closely satisfies state and federal constitutional requirements. If no plan is submitted by any commission member, the state Supreme Court should select a panel of three state court judges, other than Supreme Court justices, to do the districting, subject to review by the state Supreme Court.**

We believe these eventualities are unlikely to occur. But they must be provided for in any constitutional provision which removes the task of districting from the Legislature and imposes it upon a commission.

**12. Time limits should be imposed by the Constitution upon all the state participants in the districting process, including the state courts, so that the process is completed well in advance of the time when candidates must file their intentions to run for membership in the Congress or the state Legislature.**

The following table indicates the maximum time limits which our proposed revision would impose upon all participants in the districting process. The various stages of the process are not likely to require the maximum time allowed; even if all did, potential candidates would have ample advance notice of new districts.

| Activity in Question | Deadline |
|---|---|
| Governor's request for appointment of Districting 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 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 |
| *Alternative One* | |
| Filing of final plans by commission | August 23, 1981 |
| Publication and effective date as law | September 2, 1981 |
| Petition for review of commission action | October 2, 1981 |
| Final state Supreme Court action | November 16, 1981 |
| Review by Supreme Court of United States | ? |
| *Alternative Two* | |
| Submission of individual member plans if commission fails to act | September 22, 1981 |
| Selection by state Supreme Court of plan or plans | December 22, 1981 |
| Review by Supreme Court of United States | ? |
| Action by three state court judges if individual members fail to submit plans | January 22, 1982 |
| Review by state Supreme Court | April 7, 1982 |
| Review by Supreme Court of United States | ? |

*The Commission is aware that its recommendations on the executive branch advise deletion of the Secretary of State from the Constitution. In that event, the present constitutional duties performed by that official would be provided for by law. The several duties imposed on him by this reapportionment amendment (see text, Appendix D) would be transferred to an appropriate agency.

**13. The Legislature should create a standing citizens commission to advise it concerning periodic adjustment of legislative compensation.***

In our opinion, the present salary of a state legislator does not reflect the heavy demands made by citizens and the legislative process upon the legislator's time. Nor does it reflect the importance of the legislator's job. The low salaries paid legislators preclude from running for legislative office those citizens who are not well-to-do and are not in occupations which they can carry on simultaneously with their legislative tasks. We think the financial sacrifice involved in serving in our Legislature had something to do with the large number of legislators who refused to run for reelection in 1972, as did the fact that the low salaries are thought to reflect the regard with which our citizens view their legislators. Legislative compensation should be high enough to make it possible for citizens of different occupations, races, sexes and economic circumstances to consider running for the Legislature. This is the real meaning of a "citizen legislature." Adequate salaries will help make the Legislature more representative, and at the same time minimize potential conflicts of interest between the public and private careers of legislators.

Legislators are reluctant to raise their own salaries to adequate levels. Such action invites a campaign issue that incumbents are anxious to avoid. Backed by the recommendations of a permanent citizens commission, the Legislature may be emboldened to bring legislative compensation to a more adequate level.

**14. The Legislature should pass a statute requiring political party identification of candidates for the Legislature.**

Minnesota has a vigorous two-party system which reflects itself both in the Legislature and in national politics. There are many good reasons why political party identification of candidates for the Legislature should be required and why legislative caucuses should be organized on the basis of familiar party lines. Party designation will make for a more understandable, more accountable, more legitimate, and more effective Legislature.

The existing Constitution is silent on this issue and we think it should remain so, leaving the matter to statutory action.

**15. The Legislature, the Governor and the people of the State should continue to study and debate the possibility of a unicameral legislature in Minnesota.**

Interest in the possibility of a unicameral legislature in Minnesota heightened when the three-judge federal district court reduced the size of both houses of the Minnesota Legislature for purposes of its first 1972 redistricting plan. This interest has not dissipated. It parallels the growing interest in unicameralism in other states, although Nebraska still has the only unicameral legislature in the nation.

We are not recommending unicameralism for Minnesota. But we think this possibility should be kept open and debated in the years to come.

It is interesting to note that in spite of Nebraska's unicameralism, eight bicameral legislatures were ranked ahead of Nebraska's in the Citizens Conference Legislative Evaluation Study; Minnesota's Legislature ranked tenth.

A national Quality of Life study conducted in 1967 rated Minnesota fourth in the nation and Nebraska thirty-eighth as to "democratic process." The same study rated Minnesota first in the nation for "health and welfare" and "equality"; Nebraska ranked thirty-second in these categories. This does not mean, of course, that unicameralism is responsible for Nebraska's relatively poor rankings in these categories and bicameralism for Minnesota's relatively high rankings. A unicameral legislature in Minnesota might result in even higher rankings for Minnesota, and a bicameral legislature in Nebraska, in even lower rankings for Nebraska. These ratings mean only that unicameralism should not be regarded as a panacea for all the ills that beset American states. Our traditional acceptance of bicameralism forces the proponents of a change to unicameralism to bear the burden of proving that the change will aid reform of legislatures.

**Minority Report on Reapportionment by Senators Robert J. Brown and Jack Davies**

A minority of the Commission agrees that reapportionment should be taken out of the hands of the Legislature but disagrees as to the composition of the body then charged with the task of reapportionment. The minority also believes that the constitutional detail which the majority report requires for such a delegation of responsibility can and should be reduced.

Two major premises are involved in the minority position:

(1) That the type of citizen-legislator commission proposed by the majority of the Constitutional Study Commission suffers from a strong likelihood of partisanship or stalemate; and

(2) That reapportionment is a relatively simple, quickly accomplished process if politics is taken out of it. It is estimated that the mechanical process of redistricting could take place in about 30 days.

Under the minority proposal, a panel of three state district court judges would reapportion the Legislature, employing technical staff who would undertake the mechanics of districting under guidelines established by the Legislature. Authority to establish these guidelines would be provided in the Constitution, but the specific guidelines and other procedural and organizational details would be statutory. The guidelines would include maximum population deviations, maximum population of communities which should not be divided in any reapportionment, or any other criteria which the Legislature might wish to establish.

*Senator Robert J. Brown dissents from this recommendation. His statement follows the Commission's majority report.

The minority proposal provides that the panel of district judges would be selected by 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 then be the least partisan members of the least political branch of state government.

The minority believes that concerns as to the role of the Legislature in the reapportionment process are satisfied by having legislative leaders involved in the process of selecting the panel and by permitting the Legislature to establish criteria to be used in redistricting. The minority feels that its proposal insures that reapportionment would take place in the shortest possible time and with the least possible chance of stalemate or gerrymandering.

**Dissent of Senator Robert J. Brown on Recommendation on Legislative Compensation**

This is not a constitutional issue and has no place in our report *unless* we decide to make it a constitutional matter by removing the authority over legislative pay from the Legislature — a proposal that might have some merit. While I am against including this subject in our report, if it is to be included I think that it should be written in a more balanced way. For example, I do not agree that raising the pay above $8,400 (or even $4,800) will necessarily broaden the base of competent legislative candidates. I feel very strongly that salaries which are too high attract candidates who could not make that much money doing anything else and thus will resort to gross demagoguery in order to obtain and retain a legislative seat. There must be a balance between setting salaries so low as to discourage good people and so high as to encourage candidacies primarily because of money.

## RECOMMENDATIONS ON THE EXECUTIVE BRANCH

The constitutional structure of the executive branch of Minnesota's government remains basically the same as in the original Constitution. The only major change has been extension of terms of constitutional officers from two to four years, effective in 1962.

Minnesota's Constitution followed the early American tradition of divided executive authority fostered by colonial hatred of appointed royal governors and fear of their strong, unified powers. As a result, executive power was divided among several persons elected by the people.

The "cabinet system," under which the Governor appoints *all* other executive officials and becomes responsible for their actions, is under consideration in many states. The Minnesota Constitutional Study Commission has tried to distinguish between those officials with policy-making powers, whom the people should have the power to choose, and officials with only ministerial functions. The functions of the latter might be more efficiently combined by legislative and executive action and needed personnel appointed rather than elected.

Statutory changes of recent years have served to strengthen the office of governor by providing (1) concurrent terms for major appointed officials and (2) broad executive reorganization powers.

An important constitutional step was taken in 1972 through passage of an amendment which requires that Governor and Lieutenant Governor run as a "team" on a joint election ballot. The Commission is hopeful that the Legislature will implement the spirit of this amendment by increasing both the compensation and the responsibilities of the office of Lieutenant Governor.

Further revisions recommended by the Commission would continue the modernization of the executive branch begun through these recent constitutional and statutory changes.

### 1. The office of Secretary of State should be deleted from Article V and the constitutional and statutory duties of the office otherwise provided for by law.*

The Secretary of State is the chief elections officer for the State and is the depository for a variety of documents and records ranging from acts of the Legislature to incorporation papers for all corporations operating in the State. The Secretary of State has very little policy-making authority, however, and aspirants to the office are generally elected because of name, personal appeal or incumbency rather than because of positions on specific issues.

During the course of its study, the Commission received a proposal from Secretary of State Arlen I. Erdahl to combine the offices of Secretary of State and Lieutenant Governor. The Commission recommends that the Legislature consider this suggestion along with those made in excellent past studies of executive reorganization in Minnesota.

### 2. The office of State Auditor should be deleted from Article V and the constitutional and statutory duties of the office otherwise provided for by law.

The State Auditor is the state's chief accounting officer and acts with the commissioner of administration and public examiner to prescribe the accounting system used by all the departments and agencies of the State. The Auditor is also the pre-auditor of receipts and disbursements of State funds, issuing warrants to allow payment from the State treasury. The post-auditing function is provided by the public examiner, although many citizens erroneously associate "watchdog" post-auditing responsibilities with the State Auditor.

Like the Secretary of State, the State Auditor is seldom elected on the basis of public preference for his position on issues. Nor has he the policy-making powers which justify his election. Auditor Hatfield points out that the accounting skills necessary for the audit function would be better secured by approval of the civil service agency or a committee of certified public accountants than by election.

*See footnote on page 18.

A fundamental of sound accounting procedure is division of pre-auditing and post-auditing functions. Auditor Hatfield recommended to the Commission that the pre-auditing and accounting functions of his office be merged with the department of administration.

Another fundamental of sound accounting procedure is that a post-auditor not be appointed by the person or office which he is responsible for auditing. The present practice of having the post-audit function carried out by the public examiner, who is appointed by the Governor, violates this principle. Auditor Hatfield recommended the creation of a post-auditor, elected by the Legislature and responsible for both performance and financial audit of all state agencies.

**3. Article V, Sec. 4 should delegate the powers of pardon to a constitutional pardon board appointed by the Governor and subject to confirmation by the Senate. The pardon board should be subject to procedures established by the Legislature.**

A provision in the original Minnesota Constitution delegated pardoning power to the Governor. An amendment of 1896 created a pardon board consisting of the Governor, Attorney General and Chief Justice.

Traditionally, the power of pardon has been an executive function. Testimony from Chief Justice Oscar R. Knutson reminded the Commission that the function of the Supreme Court is to determine whether a person has had a fair trial, and that it is somewhat inconsistent to ask its Chief Justice to pass on an application for release. The Commission recommends that the Governor be given the power to appoint persons to the pardon board, which would operate under procedures established by the Legislature. Under such an arrangement, the Governor would have ultimate authority for granting pardons, but the pardon board would be operated by persons chosen for their qualifications in a field demanding both expertise and a high sense of community responsibility.

**4. The land exchange commission and state board of investment authorized in Article VIII, Secs. 4 and 7, should be retained but their memberships should be provided for by law.**

Because the memberships of the constitutionally created land exchange commission and state board of investment include constitutional officers whose offices would be deleted under earlier Commission recommendations, the make-up of these two bodies must be changed. The Commission is not prepared to recommend specific alternative memberships, which should be discussed by the Legislature and provided by statute.

**5. There should be no changes in impeachment provisions of Article XIII except that the Lieutenant Governor should be added to those officers who may be impeached.**

As the result of an apparent oversight when the Constitution was drafted, the Lieutenant Governor is not listed among those officers who may be impeached. The addition of this office to those subject to impeachment not only corrects this original oversight but is consistent with the strengthened office of Lieutenant Governor which the Commission supports.

**6. The Legislature should be constitutionally mandated to provide by statute for succession in the event of removal, death, resignation or inability of the Governor, Lieutenant Governor, Governor-elect and Lieutenant Governor-elect.**

While nothing in the present Constitution prevents the Legislature from providing for succession in the above instances, the proposed provision would *require* the Legislature to so provide. Statutory arrangements should insure continuity of government under every conceivable circumstance.

While the Commission offers no specific recommendation on the precise format that statutory succession should take, it does refer the Legislature to the Twenty-Fifth Amendment to the U.S. Constitution, and succession provisions in the *Model State Constitution* and the Illinois Constitution of 1970.

## RECOMMENDATIONS ON THE JUDICIAL BRANCH

Although the Commission rejected several basic recommendations of the Judicial Branch Committee, this action was due in large part to the very comprehensive changes proposed in the committee report. Committee suggestions for change in our judicial system raised questions of constitutional theory and political practice, as well as pragmatic considerations, which were sufficiently controversial, in Commission opinion, to merit further study.

The major proposals of the Judicial Branch Committee were summarized in its report as:

(1) Merit selection of judges
(2) Election of judges on question of retention only
(3) A unified court system
(4) An intermediate court of appeals

As will be seen from the following discussion of Commission action, the selection aspect of the merit system was rejected largely because most Commission members believed it would weaken executive power over judicial appointments. They felt the present system had proved itself and saw some flaws in selection through a nominating commission.

The unified court system was not rejected as a matter of principle, but because the Commission preferred to await the results of a nationwide study being given court unification. The Commission did accept many committee recommendations which would give the Supreme Court greater administrative power over all state

courts, thus increasing uniformity, but stopping short of unification.

As to the intermediate appellate court, the Commission preferred an amendment which would not mandate the establishment of a court of appeals, but would give the Legislature discretion to establish this new judicial level.

Throughout all these discussions ran the pragmatic consideration that Minnesota voters had approved amendments to the judicial article both in 1956 and in 1972 and that the coming Legislature would very likely not give a judicial amendment priority over other more pressing matters. Minnesotans will thus have further time to consider important proposals for judicial reform included in the committee's report. It is the hope of the Commission that the controversial aspects of judicial change, especially merit selection and court unification, will be sufficiently discussed by Minnesotans so that the next judiciary amendment can be a definitive one.

**1. The Commission failed to adopt the recommendation of the Judicial Branch Committee that the merit plan for selection of judges be constitutionally authorized.**

The Judicial Branch Committee had recommended that vacancies be filled by gubernatorial appointment from a list of not less than three submitted by a "judicial nominating commission." This is the method of judicial selection commonly referred to as "the merit plan" or "the Missouri plan."

The committee report conceded that for the most part the present system, under which 85% of presiding district court judges and six of seven Supreme Court judges came to the bench by gubernatorial appointment, has resulted in a well-qualified judiciary. It advanced its proposal for a nominating commission as a measure "to improve the quality of an already fine judicial system."

A majority of the Commission was unwilling to dilute the governor's power and responsibility for the appointment of judges. It believed that the common criticism of state governments, including Minnesota's, is directed at the "weak executive." Because the power of judicial appointment is among the most important of the Governor's present prerogatives, we believe it should be retained.

In the opinion of the Commission, Minnesota governors have shown themselves sensitive to public insistence that the quality of judicial appointments be maintained at a high level. A majority of the Commission was reluctant to accord power to a nominating commission, the makeup of which was not specified and which might be as prone to make "political" nominations as the Governor.

The *minority view* of the Commission, expressed by a majority of the members of the Judicial Branch Committee, may be summarized as follows:

The present system of conferring unrestricted power on the governor to select virtually all of the judges of the State at every level of the court gives the executive branch of government a control over the judicial branch which tends to erode the constitutional concept that they are separate but equal branches of government. By the very nature of the process, judges have been almost uniformly appointed from among lawyers with political backgrounds. It is unrealistic to expect the governor to reach out for appointments which have no bearing on political affiliations and personal ties. Although a nominating commission cannot be expected to divorce itself entirely from all political considerations, if properly selected it would represent a broad spectrum of community views without being narrowly partisan. To that end, the committee recommended that the Commission consist of six laymen appointed by the Governor, four lawyers appointed by the Bar, and the Chief Justice who would act as chairman.

To say that the judiciary of Minnesota is free from scandal and functioning well is not to say that there is no room for improvement. The merit plan is simply one more significant step toward attracting the best qualified lawyers to the bench by a method which is objective, thorough and as free from politics as is pragmatically possible. It is a plan which has been adopted by an increasing number of states, particularly at the appellate level. It has been endorsed by nearly every commission, legal and judicial professional association, and citizens' conference which has studied the matter.

**2. Vacancies caused by incumbent judges who do not file for reelection should be filled by gubernatorial appointment.**

Though the Judicial Branch Committee had not considered this change in its report, its members approved. Usually a judge resigns before the end of his term, allowing the Governor to fill the vacancy. The rationale for the practice is that the public is less qualified in the first instance to choose between unproven judicial candidates than is a Governor, who has an opportunity to consult with persons and organizations whose knowledge of the legal profession enables them to recommend appointees of high judicial caliber. A judge so appointed would stand for election after serving four years.

**3. Each judge should stand for retention in office at the next general election occurring more than four years after his appointment, and every six years thereafter, on a ballot which submits only the question of whether he shall be retained in office.**

This retention recommendation embodies another aspect of the merit system or Missouri plan.

Judges should be both responsive to the people and sufficiently independent to exercise their own judgment in matters which the public may not fully understand. This recommended "retention vote" would substitute for open filings against an incumbent and would protect both the judge's independence and the public's opportunity to remove an incompetent judge.

Lack of voter awareness in selecting judges is shown by the large numbers (about a quarter of a million) who refrain from casting ballots for supreme court justices. Though the proposed "retention vote" would not necessarily improve voter interest, it would prevent this lack of interest from resulting in the election of an unqualified judge.

Under the present system a wholly unqualified candidate might be placed in judicial office by default through the death of an incumbent judge between the primary and general elections.

**4. The Commission failed to adopt the recommendations of the committee for a unified court system which would consolidate all of the trial courts into a single district court.**

The Judicial Branch Committee had recommended that district, probate and municipal courts be consolidated in all counties of the State. The committee reasoned that a unified plan would be more efficient and more flexible than the present system in utilizing special judicial talents and in adjusting to changing workloads.

The Commission rejected this recommendation on a tie vote. One of the reasons advanced against the proposal was that service on the lower courts (municipal, county and probate) has given governors and citizens an opportunity to examine the capabilities of lower court judges before elevating them to the district court.

An important factor in the Commission's decision was the information that a National Center for State Courts is being established in Washington, D.C., and that a regional center located in Minnesota will study court structure and function in this State. The results of this study would allow a future constitutional study commission to consider in greater depth the question of court unification in Minnesota.

* * * * *

Recommendations 5-9 are related to a unified court system, but are addressed to its administration rather than its structure. At the present time, the Supreme Court exercises some degree of *statutory* power over *administration* of courts in the State. The next five recommendations would enlarge the administrative powers of the Supreme Court.

**5. The Chief Justice of the Supreme Court should be constitutionally designated as the "executive head of the judicial system" and should appoint an administrative director of courts and such assistants as the administrator deems necessary.**

The Chief Justice has long exercised the powers specified in this recommendation, both by statutory authority and by the inherent authority constitutionally conferred on his office. With the judicial administrator, who acts as his assistant in these matters, he proposes the budget for the state court system and recommends to the Governor and the Legislature measures relating to the support and constitution of the state's courts.

**6. The Supreme Court should adopt rules governing the administration, admissibility of evidence, practice and procedure in all courts. These rules should be subject to change by the Legislature by a two-thirds vote of each house.**

In the past, the Legislature has provided for these matters by specific laws, but has gradually come to realize that this function is fundamentally a constitutional responsibility of the judiciary and therefore better performed by the court than the legislative body. The Legislature has delegated substantial control over court administration to the Judicial Council (MS 483.01 - 483.04) and power to adopt rules for civil and criminal cases to the Supreme Court (MS 480.05 - 480.59).

This proposed change would promote uniformity in lower courts and provide guidance to the bench and bar through a readily accessible code. It would permit adoption of integrated and comprehensive rules of evidence now accomplished on a case-by-case basis by the Supreme Court. The Legislature could, by a two-thirds majority, override a Supreme Court decision with respect to rules of evidence, practice and procedure. The change thus recognizes the prevailing competence of the judiciary in these areas and its fundamental constitutional responsibility, but permits the Legislature to discharge its duty of responding to the needs of the citizens they represent in a democratic manner.

**7. The Supreme Court should appoint a chief judge from among the members of the district court of each judicial district.**

The chief judge of each judicial district is now elected by the judges in his district (MS 484.34). Usually the position is rotated or routinely assigned to the judge who is senior in service but not necessarily blessed with the administrative skills which the position requires. Appointment by the Supreme Court would obviate embarrassment to colleagues, establish criteria for the position, and promote uniformity and efficiency in the selection of chief judges.

**8. The Supreme Court should have constitutional authority to adopt rules of judicial conduct.**

The Supreme Court has inherent power to supervise

the conduct of all members of the bar, including those who are members of the bench. This recommendation would simply implement a constitutional amendment adopted in November 1972, which confers on the Legislature the right to make provision for the removal or discipline of judges found guilty of "conduct prejudicial to the administration of justice." Rules of conduct have already been adopted by the Supreme Court pursuant to statute."

**9. All judges should be required to be admitted and licensed to practice law in this State.**

This language does two things: (1) It translates into constitutional language the recent interpretation of the Supreme Court that the present phrase "learned in the law" means admitted to the bar and licensed to practice; and (2) it extends this provision to constitutionally cover not only judges of the Supreme and district courts, but all judges hereafter appointed or elected to courts of inferior jurisdiction.

**10. The judicial power of the State should be 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.**

The Judicial Branch Committee had recommended a constitutionally mandated intermediate appellate court system. Instead the Commission adopted language which would allow the Legislature to establish such a system if the need is demonstrated.

There is general agreement that the Supreme Court is burdened with a workload which impairs its efficiency. However, the Commission felt the Legislature might consider alternatives to an intermediate appellate court such as:

(1) increasing the number of justices from 7 to 9, which the present Constitution allows;

(2) utilizing a larger number of district court judges for temporary duty, as the 1972 judicial amendment permits.

This Commission recommendation would simply reinstate a legislative prerogative which prevailed before the 1956 judicial amendment — a right to vest the judicial power in "such other courts, inferior to the Supreme Court, as the Legislature may from time to time establish."

* * * * *

Several recommendations of the Judicial Branch Committee became part of the Constitution with passage of the judicial amendment in November 1972: (1) Probate courts are no longer constitutional offices; (2) more than one judge of the district court may serve temporarily on the Supreme Court at the same time; and (3) the Legislature may provide for the retirement, removal, and discipline of all judges.

## RECOMMENDATIONS ON THE ELECTIVE FRANCHISE

The democratic goal is to involve people as much as possible in their government. State constitutions should enhance the attempt to reach that goal. Minnesota has a history of broad citizen participation in an open political process. The aim of Commission recommendations on the elective franchise is to expand and facilitate that participation to an even greater extent.

Because of the number of recommended changes, an entirely new elective franchise article is proposed by the Commission. Draft language of the proposed article may be found in the mimeographed committee report.

**1. The residency requirement of Article VII, Sec. 1 should be reduced from six months to 30 days.**

In a recent U.S. Supreme Court ruling, Minnesota's six-month residency requirement was declared unconstitutional. Since the ruling Minnesota has been operating under a 30-day precinct residency requirement which, according to Secretary of State Arlen I. Erdahl, has served as an effective deterrent to voter fraud.

**2. The requirement of Article VII, Sec. 1 that qualified voters be United States citizens for three months should be amended to allow all citizens to vote if otherwise qualified.**

The Commission believes that all citizens who are otherwise eligible should have the right of suffrage. The present three-month waiting period for new citizens serves no practical purpose and should be repealed.

**3. The Legislature should be authorized to remove the prohibition of Article VII, Sec. 2 which denies the vote to felons and the mentally ill and mentally retarded.**

The change being recommended by the Commission would allow greater flexibility to the Legislature in determining proper restrictions on the franchise rights of these citizens. The Legislature could provide such safeguards or qualifications as were felt necessary.

**4. A new section should be added to the elective franchise article mandating the Legislature to provide for the administration of elections.**

The intent of the proposed section is to allow the deletion of the State Canvassing Board (Article V, Sec. 2) and Secretary of State from the Constitution. The new section would mandate the Legislature to provide for administration of elections, nomination of candidates, establishment of residency for voting purposes, assurances of secrecy in voting, and absentee voting.

**5. The minimum age for holding elective office specified in Article VII, Sec. 7 should be reduced from 21 to 18.** (Approved by 9-7 vote of the Commission.)

Traditionally, those who have been old enough to vote in Minnesota have been eligible to hold public office with the exception of Governor and Lieutenant Governor, who must be 25 years old. The federal Constitution sets the minimum age for President, Vice President, Senator, and Congressman at 35, 35, 30 and 25 years respectively.

The practice of allowing those who are old enough to vote to hold office was altered in 1970 through passage of a constitutional amendment lowering the voting age to 19. That amendment retained the office-holding age at 21. Some confusion has resulted from passage of the amendment, however, because of a failure to amend Article IV, Sec. 25, which provides that state senators and representatives need only be "qualified voters of the state."

To eliminate confusion resulting from the 1970 amendment and to recognize the potential contribution of young people to governmental service, the Commission is recommending that the minimum age for elective office be reduced from 21 to 18. This, of course, would have no bearing on the minimum ages which are otherwise established in the state and federal constitutions.

## RECOMMENDATIONS ON EDUCATION PROVISIONS

Current education provisions of the Minnesota Constitution are generally brief and flexible, leaving nearly all major policy determinations to the Legislature. Using this flexibility, the Legislature has been able to delegate a great deal of authority for the day-to-day operation of educational systems and institutions to governing boards and public agencies which are in a much better position to carry out specific responsibilities. This arrangement has left the Legislature free to deal with broad policy matters. Ultimate legislative control is maintained through educational appropriations.

This constitutional arrangement has encouraged the development of a system of elementary, secondary and higher education in Minnesota which is generally respected and admired throughout the country. Even more important, the present Constitution contains no impediments to a continuation of the kind of diversification and innovation which has attracted favorable national attention to our public educational system.

**1. No change should be made in the present prohibition on aid to non-public schools as provided in Article I, Sec. 16 and Article VIII, Sec. 2.**

The Commission believes that the integrity and independence of private education and the traditional separation of church and state require a continued constitutional prohibition on direct public support of non-public schools. Since any change in the present prohibition would be highly controversial, a great deal of public support would be required for passage of a proposed amendment on the subject.

To determine public sentiment on whether or not the Constitution should be altered to allow direct state support for private schools, a public hearing was held in Mankato. At that time, testimony was taken from a number of educational and religious organizations as well as interested individuals. All those who testified urged that present provisions which forbid aid to non-public schools be retained.

**2. No change should be made in Article VIII to specify the organization or unification of the higher education systems in Minnesota. The Higher Education Coordinating Commission should be given statutory authority to review and make recommendations on the budgetary requests of the various higher education systems.**

Although Article VIII, Sec. 3 recognizes the University of Minnesota, no specific constitutional reference is made to the organization of higher education in Minnesota. Rather, the Legislature has used its general power to create the State College System, the State Junior College System, and the Vocational-Technical Division of the State Department of Education.

The basic policy questions faced by the Commission were whether or not these separate educational systems should be brought together under a State Board of Higher Education and whether or not the present or altered organization of higher education should be specified in the Constitution.

At a public hearing in Moorhead, representatives of the various educational systems urged that no changes be made, either to spell out present higher education organization or to unify the various systems under a single administrative board or agency.

The Commission agrees that flexibility in servicing the higher educational needs of our State is best maintained by independent but coordinated higher education systems whose organization is not specified in the Constitution.

The Legislature would be aided by having the Higher Education Coordinating Commission review the budgetary requests of the various institutions. This power of review would parallel that which it now possesses with regard to curriculum and would not include the power to either veto or cut requests.

**3. No change should be made in Article VIII to specify the organization and structure of the Minnesota Department of Education.**

As is the case with higher education, innovative and

responsive elementary and secondary education requires the kind of flexibility which rigid constitutional structure makes impossible. Such flexibility is best maintained by a statutory State Department of Education, equipped to assume its important responsibility under broad guidelines established by the Legislature.

**4. No change should be made in Article VIII, Sec. 3 relating to the autonomy of the University of Minnesota.**

Article VIII, Sec. 3 acknowledges and confirms the establishment of the University of Minnesota and perpetuates to it "all the rights, immunities, franchises and endowments heretofore granted or confirmed."

The courts have held that this language incorporates the charter of the University into the State Constitution and implies that its alteration would require a constitutional amendment. Under its charter, the University's Board of Regents maintains a good deal of autonomy from the Legislature in managing the day-to-day operations of the University.

On the basis of both investigation and testimony presented at the Moorhead hearing of the Education Committee, the Commission has concluded that the Legislature maintains a good deal of control over the general operations of the University despite the language of Article VIII, Sec. 3. For example, legislative control can be, and is, exercised through the appropriations process. The Legislature has repeatedly placed "riders" on appropriations measures or passed special appropriations for limited purposes. Such enactments 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.

**5. There is no need for Article VIII, Secs. 1 and 2 to specify the State's role in the financing of elementary and secondary education.**

Article VIII, Secs. 1 and 2, direct the Legislature to provide for a uniform system of public education in all parts of the State. Traditionally, elementary and secondary education has been financed through property taxes administered by individual school districts. In recent years, however, the State has increased dramatically its role in financing education through "state aids" raised from non-property sources.

To determine the need for specific constitutional language to spell out more clearly or alter the State's role in financing public education, the Education and Finance Committees of the Commission held a joint public hearing. In spite of testimony which called for greater state responsibility in financing public education, it was apparent that assumption of such responsibility would not be prohibited by present constitutional language. The Commission believes that the precise role of the State in financing elementary and secondary education is best left to legislative determination as required by changing circumstances.

## RECOMMENDATIONS ON FINANCE PROVISIONS

The Commission sought, in analyzing Article IX and the other scattered provisions on finance, to identify those issues which cause problems in the functioning of Minnesota's financial system. Recommendations are for several changes to be made by amendment, but the Commission is not submitting a complete redraft of Article IX. In addition to its recommendations for constitutional change, several other issues have been identified for further study by future commissions.

**1. Article IX, Sec. 1 should 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.**

It is most helpful, in writing state income tax laws, to adopt the terminology and definitions of the federal system. This procedure makes it unnecessary for the Legislature to adopt and revise the full text of all provisions of the Internal Revenue Code. It also saves the taxpayer the difficulty of computing his taxes twice, using both a federal and a state formula. This use of a single formula is popularly referred to as "the piggyback tax."

The Supreme Court held in 1971 that the Legislature may adopt the federal law as the basis for state tax law, but only as that law exists at a particular moment. Any change in federal law requires that the Legislature readopt the Internal Revenue Code.

In making this change, we are not concerned about delegating to Congress the power to make tax definitions for our State. In the first place, Congress is a responsible political body, accountable to us all. Secondly, the Legislature would retain the power to repeal this delegation if Minnesotans became dissatisfied with the definitions adopted by Congress. The amendment would not establish such delegation, but would simply permit the Legislature to do so. (See Appendix E for draft language of the proposed constitutional amendment.)

**2. The Constitution should be amended to simplify and consolidate limitations on state borrowing by changes which would:**

**(a) replace 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) authorize the State to make an unlimited guarantee of loans to its subdivisions or agencies which are general tax obligations of the issuer, and authorize limited cash guarantees of loans to its subdivisions or agencies which are secured only by non-tax revenues;**

**(c) simplify and consolidate the provisions relating to state debt: by requiring a two-thirds 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 spent 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) provide a 120-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.**

The draft language of a bill incorporating the changes of Recommendation 2 will be found on pages 5-11 of the mimeographed report of the Finance Committee.

(a) Internal Improvements: The Constitution now states that "the State shall never be a party in carrying on works of internal improvements" except in certain circumstances. The framers of the Constitution wanted the Legislature to be able to authorize construction of prisons, schools, a new Capitol, etc. and to carry on other works necessary for governmental uses, but not to use these same powers for nongovernmental purposes such as building roads or industrial facilities which might help develop underpopulated regions of the State.

It has been necessary over the years to modify these restrictions. This has been done in three ways:

(1) Constitutional amendments have allowed the State to spend money on highways, forest fire prevention and airports.

(2) Judicial interpretation has been increasingly lenient in ascribing a governmental purpose to legislative projects; only recently the courts have held that state support for construction of sewage systems is not a work of "internal improvement."

(3) The internal improvements language has been held not to apply to local units of government when they wish to build an auditorium, for example; local units are, however, required by judicial interpretation to limit expenditures to works serving a "public purpose."

It can thus be seen that the internal improvements provision of the Constitution is not a total obstacle to state programs, since some way is eventually found around it. However, the question of constitutionality becomes paramount in such situations. Accordingly, a court test must be arranged to determine validity of the project, causing both delay and needless expense.

In summary, the Commission believes that the obsolete "internal improvements" doctrine is now so riddled with exceptions that it provides little protection for the State against unwise spending, yet impedes programs generally accepted as wise and desirable. We recommend repeal of Section 5 of Article IX and substitution of the "public purpose" doctrine, safeguarded by the constitutional provision that the expenditure must be for "a public purpose paramount to any resulting private use or benefit."

(b) Loan Guarantees: Section 10 of Article IX prohibits the State from giving or loaning its credit. Two kinds of problems are presented by this prohibition:

If the State can guarantee its full faith and credit to the bonds of cities, villages, and school districts, this greater security allows the local unit to sell its bonds at a lower interest rate. The constitutional provision can be interpreted to either prevent or allow state guarantees, thus leading to delay caused by litigation.

A similar question arises when the State wishes to insure loans made by private individuals to other private individuals. Low-income housing is an example. Interest rates on borrowing for such construction would be lower with some guarantee of repayment. Can and should the State be allowed to make these guarantees, as does the FHA for certain kinds of housing?

The Commission recommends that the State be permitted to guarantee the borrowing of local government agencies, but that this liability be limited in certain circumstances. Under our proposal, the State could provide unlimited guarantee for municipal general obligation bonds meeting the "public purpose" test required for state bonds. Unless the municipal bonds fell into default, no state bonds would be issued; the State might then be able to recover against the municipality by requiring it to levy taxes to reimburse the State. The Legislature would have the power to place a dollar limit on all such bonds.

The Legislature would also be empowered to guarantee revenue bonds of municipalities or state agencies. The guarantee would be limited to a single cash amount set aside in a special reserve account, where it would be earning interest until used or released.

(c) State Debt: Commission proposals in regard to state debt aim mainly at clarification and simplification. The Constitution now calls for a three-fifths legislative vote only on that debt incurred for acquisition and improvement of "public lands and buildings and public improvements of a capital nature." While the Commission generally favored an extraordinary majority for the issuance of all bonds, it divided evenly on the question of whether this should be a two-thirds or the present three-fifths majority.

The Commission believes that the Legislature should have the power to delegate authority to determine what portions of bond revenues should be used for different purposes, once it has established proper criteria. In this way, the Legislature could authorize bonds for the construction of certain public buildings but set guidelines rather than fixed dollar amounts for each building, leaving necessary decisions to appro-

priate agencies. This would increase the flexibility and usefulness of our state building program.

In order that all financial provisions of the Constitution be contained in Article IX, the Commission recommends incorporating into that article the borrowing authority contained in Article XVI, Sec. 12 on highways; Article XIX, Sec. 2 on airports; and Article XVII on forest fire prevention.

(d) Litigation: In order to reduce the time-consuming and costly litigation that has often been required to validate state bonds, the Commission recommends that the burden of a court test be placed on those who oppose the issue.

Since no intelligent investor will loan large sums if there is any doubt that the investment is legal, it has been necessary in the past to arrange test cases. As an example, the Pollution Control Agency had to sue the State Auditor to obtain a declaration of the validity of bonds authorized by the Legislature, leading to expense and a year's delay in instituting a needed program.

Under the change recommended by the Commission, any taxpayer who believed the bond issue was not for public purposes would have to commence suit within 120 days. Putting the burden on the opposing party would eliminate the arranged court suits between governmental agencies but allow full time for citizens to oppose a project. The 120-day limit would not cause burdensome delay.

**3. Section 32(a) of Article IV, providing a 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.**

This special provision for railroads was approved in 1871 when Minnesota's economy depended on the extension of railroad lines to all corners of the developing state. It has long ceased to have any justification and does not, the Commission believes, represent a realistic assessment of the railroads' relative share of the state's fiscal burden. The percentage rate of the railroad's gross earnings tax cannot be changed, as can that for other businesses, when the Legislature finds it desirable, but must be submitted to the voters as a constitutional amendment. We believe the citizens of Minnesota have long been dissatisfied with this preferential treatment of one industry and are glad to say that at Commission hearings, the railroad companies generally signified their willingness to contribute to Minnesota's revenues in the same way as other industries.

The draft language of the constitutional amendment which would repeal Article IV, Sec. 32(a) constitutes Appendix F of this report.

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The Commission examined the Permanent School and Permanent University Fund provisions of Article VIII, Secs. 4 through 7; the Internal Improvements Land Fund provisions of Article IV, Sec. 32(b); and some regulations on the administration of these funds found in Article IX, Sec. 12. We find no need for change in any provisions relating to these funds and their investment. The administration of the lands which produce the revenues for these funds is treated in the Natural Resources section of this report.

Some other, less important issues were also reported to the Commission by the Finance Committee as warranting further study by a future constitutional study commission.

1. Is the uniformity in classification provision of Article IX, Sec. 1 adequate to meet modern needs? Should the Constitution either put further restrictions on the Legislature's power to classify for tax purposes or widen these powers?

2. Should the State, as well as local units of government, be clearly authorized to levy special assessments against benefited property? Are there cases in which it would 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 on banks and banking law be repealed? If not, should the two-thirds required to pass a banking law be changed to a majority?

## RECOMMENDATIONS ON INTERGOVERNMENTAL RELATIONS AND LOCAL GOVERNMENT

A constitutional amendment of 1958 consolidated all local government provisions of the Constitution in Article XI, with the single exception of Article IV, Sec. 33, which limits the Legislature's power to enact special legislation.

The local government article is generally considered a progressive, flexible statement of relationships between state and local government. This constitutional flexibility has been used wisely to authorize innovative approaches to local government, now being used as models in a number of other states.

The Commission believes that Article XI provides a flexible framework under which the Legislature can achieve an appropriate balance between local autonomy and state sovereignty and encourage the maximum development of intergovernmental cooperation. The Commission is therefore recommending no major changes in local government provisions of the Minnesota Constitution. A statutory change would suffice to differentiate bills needing and not needing local approval. Constitutional recommendations on Sections 3 and 4 would clarify and consolidate. A new Section 4 would encour-

age cooperation among local units of government by the addition of specific constitutional language.

**1. Sec. 645.023 of the Minnesota Statutes should be amended to require local approval of laws relating to one or a few units of government.**

Though not a constitutional matter, this change is deemed sufficiently significant by the Commission to merit inclusion in its recommendations. In order to achieve an appropriate balance between the state sovereignty and local autonomy referred to above, some restriction must be placed on the passage of special legislation by the Legislature. The 1958 local government amendment recognized this premise and required that the affected localities be named in all special legislation and that local approval be required unless "otherwise provided by general law." The Legislature has used this "escape clause" in present constitutional language to remove the requirement of local government approval, largely to allow passage of regional or metropolitan legislation without requiring the approval of dozens or even hundreds of affected local government units.

The Commission appreciates the need to enact special legislation in certain circumstances. It believes, however, that in order to maintain local control over issues that are basically local in nature, local approval should be required for all special laws affecting one or several units of local government.

**2. No further authorization for county home rule is needed than present Article XI, Sec. 3.**

Under the present Constitution, counties have only those powers delegated to them by the Legislature. Several county officials and organizations asked that home rule powers for counties be specified in the Constitution. The present language of Article XI, Sec. 3 does, however, authorize the Legislature to provide by law for home rule for counties and is, the Commission believes, sufficient.

**3. Article XI, Secs. 3 and 4, relating to home rule and charter commissions, should be simplified and consolidated and should eliminate reference to "freeholders" and to district court judges as the potential appointing body of charter commission members.**

Sections 3 and 4, dealing with home rule charters and charter commissions, contain some redundancy and confusion of language, partly a residue of original constitutional phraseology. Section 4 also provides that property ownership "may" be used as a qualification for membership on a charter commission. Although the Legislature has required only that the commission member be a qualified voter, constitutional reference to so outmoded and undemocratic a qualification as property ownership should be expunged. The constitutional permission for district court appointment of charter commission members, presently utilized, should be removed; the appointing power should lie in the people, or their representatives, over whom commission deliberations have such great influence.

The precise language of a new Section 3, simplifying and combining present Sections 3 and 4, is found in the mimeographed committee report. It would give the Legislature full and flexible power to prescribe details relating to home rule charter commissions, and to the adoption, amendment and repeal of home rule charters.

**4. A new section should be added to Article XI providing for the joint or cooperative exercise of powers of local government units with each other or with other agencies of government.**

With the complex 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 finding cooperation essential, and are pooling resources and combining other efforts to solve the multitude of problems which reach across local government boundaries.

Minnesota has a progressive legislative and judicial history of encouraging cooperation between local units of government and providing regional approaches to wider problems. Much of this encouragement has come through aggressive interpretation and implementation of the Joint Exercise of Powers Act (Minnesota Statutes 471.59) first enacted in 1942. The Commission believes it desirable to remove any doubt as to the constitutionality of such cooperation and to further encourage appropriate intergovernmental activities. The precise wording of the proposed new Section 4 may be found in the mimeographed committee report.

## RECOMMENDATIONS ON THE AMENDING PROCESS

The Commission decided to recommend changes in both ways of revising the State Constitution — the separate amendment process of Sec. 1 and the constitutional convention process covered in Secs. 2 and 3. Although the Commission is not recommending a constitutional convention, perhaps citizens and Legislature may not agree with the decision, or future needs of the State may make a convention desirable.

The Minnesota Constitution puts great difficulty in the way of both separate amendments and a constitutional convention.

The Commission agrees with the assessment contained in W. Brooke Graves' definitive *State Constitutional Revision:*

> 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.[18]

Minnesota is one of a handful of states still retaining the "extraordinary popular vote" cited above.

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 adopt such an amendment. Between 1870 and 1946, Illinois tried on five occasions to ease its extraordinarily difficult amending process and 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 they dubbed 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 eased 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) relaxed the legislative procedure for putting an amendment on the ballot, either by lowering the majority from two-thirds to one-half 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 constitutional convention.

The following recommendations comprise the specific changes which the Commission believes would make revision of our Constitution workable — easier than at the present, yet not open to capricious change by a determined minority. Our goal is expressed in the following quotation:

> The constitutional amendment procedure ought to be sufficiently difficult to protect the document against frivolous amendments and sufficiently liberal to permit necessary ones. . . . The advantage of including rigorous restrictions of the amending process must be weighed against the disadvantages of inflexibility and obsolescence of the document as a whole. . . . Restrictions of the amending process are in some measure intended to be protections against constitutional instability.[19]

The draft language of the Gateway Amendment proposed by the Commission constitutes Appendix G of this report.

**1. Amendments should continue to be submitted to the voters by a majority vote in each House, as provided in Article XIV, Sec. 1.**

The submission stage of the amending process has always been unusually easy in Minnesota. Only 17 other states require only a majority vote, and 10 of these require passage in more than one session.

The Commission heard testimony from some authorities favoring a two-thirds vote of each house, since that higher majority would insure that amendments had wide legislative support and would also enhance chance of passage by the voters.

The Commission found more persuasive the argument that the two-thirds majority would make it necessary to please so many legislators of varying viewpoints that the quality of the amendment might be diluted.

Practically speaking, amendments selected to appear on the ballot have survived scrutiny of several legislative committees before being voted on by the Legislature. Furthermore, the final vote is usually almost unanimous.

**2. The Constitution should continue to make no provision that amendments can be initiated by petition, with the single exception of alterations affecting the structure of the Legislature.**

The case for initiated amendments is put thus by the *Model State Constitution:*

> 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.[20]

In 1916, during the Progressive Reform Era, when the initiative, referendum and recall were being widely advocated, an amendment allowing initiated measures was submitted to Minnesota voters and defeated.

The 14 states which have adopted initiated amendments have not found the method very productive. All 10 of the amendments initiated in these states between 1968 and 1970 failed. Too often, initiated amendments are used for emotional, high-pressure purposes. The Commission feels that regardless of the theoretical merits of the initiative process, to include it in a Gateway Amendment would dangerously increase the controversial aspect of that amendment.

The Commission does feel, however, that legislatures are naturally less responsive to citizen convictions on questions that relate to their own composition and function than on other matters. It therefore recommends that Minnesota follow the recent example of Illinois, which allows citizens to initiate changes in the structure and procedures of the Legislature. The Commission does not recommend such citizen action with regard to procedures of the Legislature, these being internal matters of legislative reform already in process of commendable change. However, many citizens feel strongly about a unicameral legislature and the size of our Legislature, and the recommended change would provide an avenue of action for these convictions if widespread enough. The specific provisions of the recommended initiative procedure will be found in Section 3 of Appendix G.

**3. There should be no change in the present requirement of Article XIV, Sec. 1 that proposed amendments be limited to one subject.**

If the Legislature adopts the speeded-up revision process recommended by the Commission, it will be necessary to amend entire articles at one time. To do this, many states have included in their gateway amendments a provision that a complete article, or even a package of articles, could be accepted by a single vote. Must Minnesota do the same?

The MCC of 1948 recommended that the Legislature be allowed complete discretion in framing amendments, but a constitutional change to that effect was badly defeated in the general election of that year.

The Commission recommends against changing the present provision of Article XIV on "multifarious amendments," as they are called. One reason for our decision is that the voters might turn down the Gateway Amendment if it gave the Legislature this much power. A much more important reason is that the Minnesota courts have been very generous in ruling on amendments that were challenged on the ground of covering more than one subject. (The mimeographed Amending Process report gives the legal background on pages 19-24.) Entire articles (home rule, judiciary) have been amended by one vote and never challenged. If such a challenge is made in the future, the Commission believes courts will defer to legislative judgment.

**4. Amendments should be approved either by a majority of those voting at the election, as now provided in Article XIV, Sec. 1; or by 55% of those voting on the proposition.**

This change is the heart of the Gateway Amendment. The present provision that amendments must be approved by a majority of everyone who votes in the election is, in the opinion of the Commission, both unfair and so difficult that it will impede implementation of the Commission's other recommendations.

In the process of adopting gateway amendments, many states have recently abandoned a similar amending majority so that Minnesota is now one of only four states that require the approval of a majority of all electors for amendment passage.

The testimony to the Commission was unanimous in recommending an easing of Minnesota's amending majority. The following reasons were stressed:

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. The League and other organizations which have worked for amendments might well remind Minnesotans of the remark of a well-known expert on constitutional reform: "In any society there is just so much political energy. . . . You have to use it rather carefully."[21]
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 submitting more controversial ones at the same election.
4. The difficult ratifying vote wastes time and money. Since 1920 alone, 10 amendments which were rejected when first submitted were finally adopted, being resubmitted from one to 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. Amendments which have received three times as many yes as no votes have been defeated in Minnesota.

As we saw on pages 4-5, Minnesota's Constitution originally contained the easiest amending process in the nation. It took only a majority of legislators to submit an amendment to the people; amendments could be submitted each year; and, most important of all, amendments were adopted or rejected by a *majority of those voting on the amendment.*

From 1858 to 1898, a total of 66 amendments were submitted to the voters and, under this easy amending majority, 73% were adopted. These changes enormously improved the original document. However, in 1898 the voters approved a change in the amending process which made it extremely difficult to pass amendments. This change required the yes vote of a *majority of everyone voting in the election,* not just of those voting on the question. There was an immediate, striking change in the adoption rate for amendments. As many amendments were now rejected as had formerly been adopted. From 1900 through 1920, voters rejected 77% of submitted amendments.

A few members of the Commission wished to return to the easy amending procedure of the original Constitution, by requiring for ratification only a simple majority of those voting on the question. Most members felt that a return to this simple majority would make Minnesota's amending process too facile. They saw wisdom in the opinion quoted above[19] that some restriction on the amending process is a safeguard against constitutional instability. A wide-open amending process may invite the addition of non-basic, statutory-like material which seems necessary only at the moment of adoption.

Four-fifths of the 50 states require more than a simple majority at either the submission or the ratification stage of a constitutional amendment.[22] The Commission prefers to remain in their company — especially in view of our recommendations for special elections and a limited initiative, which open up the amending process in other ways.

In the 1950's Illinois adopted the kind of ratification alternative we suggest: either a majority of all electors or two-thirds of those voting on the question. Their experience has shown that the two-thirds is not much easier to attain than a majority of all electors. We are sure that our alternative of 55% will strike a good balance between flexibility and stability in our amending process.

**5. The Legislature should be able to submit amendments at a special election if two-thirds of each house concur.**

The Commission believes that time may be of the essence in some cases. Therefore, the Legislature should be able to provide for a special election in those instances by an extraordinary vote. The Commission is not encouraging the submission of amendments at special elections, only providing for the contingency in which a time factor might be critical.

**6. The Legislature should be permitted to submit the question of calling a constitutional convention to the people by a majority of the members of each house.** (Approved by 8-7 vote of the Commission.)

At present, two-thirds of each house is required to submit this question. The majority of states (26) require only a majority. The Commission feels that in view of other constitutional safeguards against hasty adoption of a new charter, a majority of both houses is sufficient to initiate the process.

**7. The Legislature should be able to submit the question of calling a constitutional convention at a special election if two-thirds of each house concur.**

Should a convention be desired by Legislature and citizens, this recommendation could speed up a process that is now very lengthy.

**8. The present provisions of Article XIV, Sec. 2 should not be changed to allow for citizen initiation or periodic submission of the question of calling a constitutional convention.**

Although periodic submission of this question has resulted in the calling of a constitutional convention in a few states where legislators have resisted citizen pressure, periodic convention calls are usually turned down. Since the Commission has recommended a very easy submission process by the Legislature, it believes there is no rationale for citizen initiation or periodic submission.

**9. A constitutional convention should be approved by either a majority of those voting at the election, as now provided in Article XIV, Sec. 2; or by 55% of those voting on the question, whichever is less.**

This change would parallel the majority required to approve a constitutional amendment.

**10. The present provision of Article XIV, Sec. 3 that a new Constitution be ratified by three-fifths of those voting on the question should not be changed.**

A three-fifths vote makes it more difficult to approve a new Constitution than to adopt an amendment. The Commission believes that is proper.

This provision of the Constitution was adopted in 1954 by a vote of three to one, so represents both a recent and a well-considered opinion of Minnesota citizens.

**11. A new Constitution should be submitted, according to the judgment of the convention which framed it, at either a special, a primary or a general election, to be held between two and six months after adjournment of the convention.**

The Commission believes that the present constitutional provision that a new constitution be voted on only at a general election is too restrictive. The MCC report and the *Model State Constitution* both contain provisions similar to our recommendation. Conventions in recent states have been enabled to set election dates within similar limits. The two months' minimum prevents too-hasty adoption. Anything over the six months' maximum would probably result in loss of citizen interest.

## RECOMMENDATIONS ON TRANSPORTATION

A transportation "policy" must cover all available modes of transportation—air, highways, rail and water, as well as the combination of modes necessary for mass transit in metropolitan centers.

By this definition, Minnesota's Constitution does not set forth a transportation policy. Nor has the Commission attempted to draft a new and comprehensive transportation policy, believing that is a legislative matter.

As a beginning, the Commission has evaluated those provisions of the present Constitution which deal with transportation: Article XIX on aeronautics; Article XVI on highways; and two short sections dealing with railroads.

A basic issue faced by the Commission was whether transportation provisions should be general in nature, simply outlining legislative authority, or long and detailed as is the highway amendment with its specifications on bond and interest limits, highway routes and mileage limits.

**1. No change should be made in Article XIX, relating to aeronautics.**

In 1944 Minnesota voters approved a constitutional amendment which authorized the State to finance the construction and maintenance of airports. This constitutional authority was deemed wise to obviate the possibility of airport expenditures being challenged under the prohibition of Article IX, Sec. 5, against the State engaging in works of internal improvement.

Under Article XIX the State may itself build, maintain and operate airports and other air navigation facilities or it may assist local units of government in so doing. Following passage of this amendment, the Legislature created a Department of Aeronautics, which the Commission believes has done a most effective job over the years.

Sections 3 and 4 of Article XIX authorize the Legislature to impose a tax on flight fuel and aircraft. These taxes are not dedicated to a particular purpose, but the Legislature has consistently expended these funds for the purposes authorized in Article XIX.

The Commission believes that the strong role assumed by the State in encouraging and financing airports should be continued and that Article XIX provides ample and flexible powers for that purpose.

**2. Article XVI should be repealed except for Section 1 and the following language of Section 12: "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."**

Whether or not highway user taxes should continue to be dedicated to highway construction and maintenance is a controversial question. The same sharp division of opinion apparent among Minnesota citizens was also evidenced within the Commission. The final vote was 10 for undedication of highway funds; 6 for retention of such dedication.*

The dedication of highway funds was the only question on which the Commission adopted the minority rather than the majority report of a study committee. Although the repeal of Article XVI is usually characterized as a rural-urban split, that division was not entirely true of the Commission vote, since three metropolitan members voted against undedication of the highway funds.

Because the Commission adopted a minority report of a study committee, because the decision was so close, and because the issue is so controversial, this report will summarize the arguments both for and against retention of the dedication of highway user taxes.

**Arguments for Retaining Dedicated Highway Funds—** The automobile has contributed immeasurably to the development and mobility of American society. Americans are now irretrievably dependent on the automobile as a means of transportation, both economically and socially. Withdrawing funds for the construction of new highways and the maintenance and improvement of those we now have would mean severe deterioration in the mobility of the American public, affecting both our economic growth and our societal life style.

Undedicating the highway funds is especially feared in the rural areas, where the need for new roads is especially acute. It is the duty of the State to fulfill these desires before abandoning a policy approved by the voters themselves in 1956.

The continuing abandonment of railroad branch lines will have an enormous impact on the need to upgrade outstate roads to a nine-ton capacity. Some 115 Minnesota communities with 177 grain elevators which are now served by railroads have less than the nine-ton capacity they would need if branch lines were abandoned. (The Commission took no action on any policy relating to railroad branch line abandonment, but refers interested readers to the mimeographed Transportation Committee report, which considers the problem in depth and outlines possible state and federal approaches.)

It is a stark political reality that a constitutional amendment must be passed by all citizens of the State and that rural Minnesota is united in opposition to a repeal of highway fund dedication.

Commission members who advance the above reasons for retention of dedicated highway funds are acutely aware of the serious impact of the automobile on our natural and social environment. They wholeheartedly support the development of attractive transportation alternatives, the development of more efficient automobile engines and mandatory installation of effective anti-pollution devices on all motor vehicles.

**Arguments for Repealing Dedicated Highway Funds—** As a matter of consitutional principle, the dedication of funds to a specific purpose limits legislative judgment, substituting rigidity for the kind of flexibility needed to attack changing problems. The majority of Commission members trust the Legislature to establish a public policy for financing transportation that will

*Representatives Aubrey Dirlam and Richard Fitzsimons, Senator Carl Jensen and Mr. Orville Evenson wish to be publicly recorded as voting against undedicating the highway funds.

serve the changing needs of all peoples in all parts of the State.

Despite taxes on gasoline and motor vehicle licenses, the automobile does not come close to paying the enormous costs of road construction and maintenance or its impact on our natural and social environment. Transportation alternatives to the automobile must be encouraged to mitigate the environmental ravages of more and more, wider and wider highways, with their disruption of community patterns and resources, their pollution of the air and their dangerous threat to our dwindling supplies of fossil fuels.

The needs of the urban area for mass transit will never be met under the provisions of Article XVI. Both urban and rural areas should be able to expend the funds allotted to them as they see fit. This flexibility in allowing the large metropolitan area to develop plans for rapid mass transit would not keep the rural areas from building the roads demanded by changing population patterns in outstate Minnesota.

Support is growing on the federal level for more flexibility in the use of highway funds. Secretary of Transportation John Volpe recommended to Congress "The 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 and would provide a rural general transportation program, including a continuance of existing primary and secondary federal aid systems.

Only with a more flexible highway program than that provided by Article XVI could Minnesota take advantage of the funding changes being seriously and increasingly considered at the federal level.

**3. If the Legislature does not act favorably on Recommendation 2 above, the mileage, bond and interest limitations of Article XVI should be repealed.**

Article XVI suggests mileage limitations for streets and highways eligible for state aids. It also imposes restrictions on the highway bonding authority of the state, both in total amount ($150 million) and in interest rate (5%).

The mileage limitations have proved to be meaningless suggestions, since the Legislature has extended them as the article provides it may do.

Bonding and interest limitations have also proved unrealistic. In recent years the 5% interest limit has made it difficult to sell bonds. Since 1957 three factors have changed, all calling for a re-evaluation of the $150 million bonding limit: an increase in property values, a rise in individual and aggregate income and a great increase in population. Needed checks on government spending for these purposes are better left to legislative discretion.

**4. The Legislature or other groups designated by the Legislature should undertake a comprehensive study to determine the need for revision of the highway-user distribution formula of Article XVI, Sec. 5.**

The formula for distributing highway funds provides that 62% of the highway-user funds be used for trunk highways, 29% for county state-aid roads and 9% for municipal state-aid roads. The Legislature was also granted power after January 1963 to set aside 5% of the net proceeds of the entire fund to be apportioned as it saw fit.

The Commission believes this distribution formula is too rigid to be practicable. As it is over 18 years since the formula was devised, the Commission believes that the Legislature should revise the percentages to adapt them to changing circumstances.

**5. 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, should be repealed.**

Minnesota's Constitution contains two provisions relating to railroads. The provision of Article IV, Sec. 32(a), which applies a different form of taxation to railroads than to other industries, has been recommended for change in the Finance section of this report.

The other section relating to railroads (Article IX, Sec. 15) appears to authorize a limited expenditure of public funds by municipalities to aid in the construction of railroads. In 1872, when local communities were attempting to lure railroads into their areas by financial aids, the Legislature submitted and the voters approved an amendment which limited indebtedness for this purpose to ten percent of the value of the taxable property of the county, township, city or village issuing the bonds. In 1879 another amendment lowered the ten percent to five percent.

This provision is obviously obsolete and should be repealed. 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.

## RECOMMENDATIONS ON NATURAL RESOURCES PROVISIONS

Minnesotans are justly proud of the wealth of natural resources possessed by our State. The Commission believes that, for the most part, conservation and management of natural resources are best handled by the

Legislature and administrative and regulatory agencies, and that they are being well-administered at present. Nevertheless, certain fundamental responsibilities of the State to provide a healthy environment for its citizens and to protect its natural resources can and should be set out in the state Constitution.

**1. A new article should be added to the Minnesota Constitution establishing the provision and maintenance of a healthful environment as public policy and mandating the Legislature to provide for the implementation and enforcement of this public policy.**

There seems 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 must take firm measures to combat these environmental threats.

The proposed amendment, affirming the duty of the State to provide a healthy environment for its people, would firmly articulate a policy of great importance to the people of Minnesota and would serve as a constant reminder of this fundamental duty of state government.

**2. There should be no change in constitutional provisions of Article VIII, Secs. 4-7 and Article IV, Sec. 32(b) which relate to the administration of state trust fund lands.**

In the process of becoming a state, certain lands were granted to Minnesota by the federal government. Because income from the sale or lease of the trust fund lands is largely dedicated to education, the lands must be sold or leased in order to generate income. This restriction on management precludes the use of the lands solely as wilderness areas, parks or scientific preserves.

The income generated by sale or lease of the trust fund lands is important to educational financing, providing funds which would otherwise have to come from additional tax receipts. The Department of Natural Resources, which is charged with administration of these lands, has long placed stringent ecological restraints on their management.

Because the Department of Natural Resources manages the lands in a manner which matches income production with sound ecological principles, the Commission is recommending no change in the constitutional provisions on trust fund land administration.

**3. There should be no change in the provisions of Article XVII relating to forest fire prevention and Article XVIII relating to forestation.**

Forest fire prevention and forestation were specifically authorized as legitimate activities of the State by amendments adopted in 1924 and 1926. The provisions on forest fire prevention allow the contracting of state debt. Unless and until the restrictions on internal improvements are lifted, the Commission recommends no change in this specific authorization of Article XVII.

Article XVIII authorizes a special tax treatment for forest lands, which otherwise might conflict with provisions of Article IX, Sec. 1.

# SECTION FOUR

## PRIORITY RECOMMENDATIONS TO THE 1973 LEGISLATURE

The Constitutional Study Commission of 1972 was asked by the 1971 Legislature to examine Minnesota's Constitution for needed changes and to suggest a revised constitutional format in preparation for either a constitutional convention or further amendments to the present Constitution.

As the eleven study committees of the Commission began reporting, it became evident that Minnesota's Constitution did not need so many and such far-reaching changes that they could be accomplished only by a constitutional convention called to rewrite the entire document.

The Commission was also dissuaded from recommending a constitutional convention by the lack of citizen interest in a project that demands the greatest degree of public commitment for success.

In the last twenty years, over four-fifths of our 50 states have undertaken major revision of their basic charters. A review of their relative success led the Commission to conclude that less had been accomplished by the preparation and submission of entirely new documents by constitutional conventions than by the amending process when comprehensive changes had been submitted to the voters in an orderly fashion over the course of several elections.

**Our first recommendation to the 1973 Legislature is therefore that Minnesota's Constitution be improved through a process commonly known as "phased, comprehensive revision"—or a series of separate, but coordinated amendments planned for submission over several elections.**

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All states which have undertaken major constitutional overhaul in recent decades have used constitutional study commissions to identify problems, hear public testimony, suggest amendments or entirely new documents, advise legislative committees and help educate the public before the vote on amendments or a new constitution. Usually these commissions contain both legislators and lay members, are carefully bipartisan in nature and are appointed jointly by the governor and legislative bodies.

**We recommend that the 1973 Legislature create another study commission to consider those many constitutional provisions not thoroughly reviewed by the present commission, to further review the provisions herein presented and to recommend the second and subsequent phases of revision.**

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If Minnesota is to update its document by separate amendments, it is essential that the amending process of our Constitution be fair and workable. The Commission believes that constitutions should not be changed too easily, but that Minnesota puts unreasonable difficulties in the way of constitutional change. Minnesota is one of only four states which require that an amendment receive the affirmative vote of a majority of all voters in that election, whether or not they vote on the proposal. This procedure counts all non-votes as no-votes. This is not, we feel, democratic or fair.

Many other states, facing up to the need for comprehensive improvement of old constitutions, have had to open the way to change by revising their revising articles. These changes are commonly described as "gateway amendments."

**We therefore recommend that Minnesota facilitate the purpose of constitutional improvement by placing on the 1974 ballot a Gateway Amendment which would provide (1) that an amendment be approved either by a majority of all electors or by 55% of those voting on the proposal, whichever is less; (2) that citizens be able to initiate amendments on matters of legislative structure; (3) that the Legislature, by a two-thirds vote of both houses, be able to submit amendments at a special election; and (4) that the calling of a constitutional convention be made easier by lowering from two-thirds to one-half the legislative majority needed to submit the question to the people, by allowing submission of the question at a special election if two-thirds of each house agree, and by requiring the call to be approved either by a majority of all electors or by 55% of those voting on the proposal, whichever is less.**

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One of the first actions of the Constitutional Study Commission was appointment of a Committee on Structure and Form to prepare the "revised constitutional format" requested by the Legislature. The result is a document which shortens, clarifies, updates, and reorganizes the present Constitution without making consequential change.

**We recommend that a revised constitutional format which would delete obsolete and inconsequential provisions, clarify and modernize the language, reorganize logically related provisions, shorten the length by one-third and reduce the articles from 21 to 14, be placed on the 1974 ballot for approval.**

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The above recommendations would require submission to the voters in 1974 of two constitutional amendments. The entire Commission agreed that these two

were essential to the method of constitutional improvement which we urge the 1973 Legislature to adopt. Commission members agreed that another three amendments should go on the ballot in 1974.

Timeliness was the main criterion which we applied to our choice of high-priority amendments. What constitutional changes are particularly pertinent in 1973 and 1974?

We quickly and unanimously decided that timing was of the essence in regard to that amendment which shifts the reapportioning power from the Legislature to a Districting Commission. Never before have legislators been so willing to rid themselves of a burden that they find heavy and difficult of accomplishment. Never again will the public remember so keenly the litigation in courts of every level, state and federal, that accompanied the redistrictings of 1959, 1965 and 1971. Never again will political parties be so conscious of the difficulty of fielding candidates in fluid districts lines. Never again in this decade will legislators be so free from the fear of relinquishing a familiar district.

**We accordingly recommend that in 1974 the voters of Minnesota be asked to remove the reapportioning power from the Legislature to a bipartisan Districting Commission of four legislative and nine non-legislative members, empowering the Legislature to set standards and guidelines for the commission.**

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The Finance Committee of the Commission strongly urged the present need for a constitutional change which would allow the Legislature to levy state income taxes by the "piggyback" method, computing them as a percentage of the federal income tax. We are aware that there is disagreement over the advisability of the piggyback tax, and of the need for a constitutional change to implement it. However, the recommended amendment would not only assure the constitutionality of such a taxing method if agreed on by the Legislature, but would highlight arguments for and against a change which many citizens presently see as a great convenience, and test their final reaction to the new taxing procedure.

**We therefore recommend that the voters of 1974 be asked to pass on an amendment which would allow the Legislature to levy and compute state income taxes as a percentage of the federal income tax, a procedure commonly known as the "piggyback income tax."**

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The Commission also agreed on the advisability of deleting from the Constitution the special taxing method applied to railroads in this State. The application of a gross earnings tax in lieu of taxes paid by other industries is anachronistic and long overdue for repeal. It is the one Minnesota tax which can be changed only by a constitutional amendment.

For the first time, most railroads operating in Minnesota agree on the need for repeal and are ready to accept the same taxes as applied to other industries in the State.

**We therefore suggest, as our final recommendation, that the provision for a five percent gross earnings tax on railroads in lieu of all other taxes be removed from the Constitution by amendment.**

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The members of the 1972 Constitutional Study Commission are keenly aware that the Legislature may not agree with their recommendations for priority amendments. The Legislature may feel other changes are more important or, agreeing, they may feel that certain provisions of the recommended amendments need modification. The 1973 and 1974 sessions may also highlight issues which transcend those we have discussed. But we are confident that the unanimous agreement of a commission which included 12 experienced legislators among its 21 members is testimony to the need for the improvements we herein respectfully submit to the citizens of Minnesota and to their elected representatives.

## FOOTNOTES

1. Commission on Intergovernmental Relations, *A Report to the President for Transmittal to Congress* (1955), p. 37.
2. *Ibid.*, p. 56.
3. See the bibliography for recent surveys.
4. *The Book of States* published by the Council on State Governments each biennium begins with a section on state constitutions and their revision, presently being compiled by Albert L. Sturm.
5. William Anderson and A. J. Lobb's *A History of the Constitution of Minnesota* (1921) is the definitive source for Minnesota's constitutional history from territorial days up to 1920.
6. *Ibid.*, p. 129.
7. *Ibid.*, p. 147.
8. League of Women Voters, *Constitutional Revision* (1967), p. 2.
9. *Ibid.*, p. 3.
10. Legislative Reports of the League of Women Voters for 1955 and 1957.
11. G. Theodore Mitau, "Constitutional Change by Amendment: Recommendations of the Minnesota Constitutional Commission in a Ten Years' Perspective," *Minnesota Law Review*, vol. 44, no. 3, p. 480 (1960).
12. League of Women Voters, *Constitutional Revision*, pp. 2-3.
13. *Ibid.*, p. 3.
14. Harvey Walker in W. Brooke Graves, *Major Problems in Constitutional Revision* (1960), p. 15.
15. *Ibid.* For the contribution and role of state constitutional commissions see chiefly W. Brooke Graves, *Major Problems in Constitutional Revision*, pp. 31ff. and chapter 6; Albert L. Sturm, *Thirty Years of Constitution-Making, 1938-1968*, especially chapter 3, pp. 109-112 and Appendix D; and Sturm, *Trends in State Constitution-Making, 1968-1970, passim.*
16. *Model State Constitution*, p. 27. For further annotations to Section Three of this report see the mimeographed committee reports.
17. *Op. cit.*, p. 118.
18. David Fellman in W. Brooke Graves, *Major Problems in State Constitutional Revision* (1960), p. 154.
19. Frank P. Grad, *The Drafting of State Constitutions* (1967), p. 32.
20. *Model State Constitution*, p. 106.
21. John Bebout in *Contemporary Approaches to State Constitutional Revision* (1970), p. 32.
22. Arizona, Arkansas, Missouri, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania and South Dakota require only a majority of the elected members of the legislature to submit an amendment and a simple majority of those voting on the question to approve. Seven of these 10 states also allow initiated amendments. Three do not allow amendments to be submitted at a special election.

# SELECTED BIBLIOGRAPHY

## General Materials


THE BOOK OF THE STATES, 1972-73. The Council of State Governments, 1972. See especially "State Constitutions and Constitutional Revision, 1970-71," by Albert L. Sturm (pp. 3-28).

CONTEMPORARY APPROACHES TO STATE CONSTITUTIONAL REVISION, by David Fellman, John Bebout, and G. Theodore Mitau. University of South Dakota, Governmental Research Bureau, Report 58, 1970. 66 pp.

THE DRAFTING OF STATE CONSTITUTIONS: WORKING PAPERS FOR A MANUAL, by Frank P. Grad. National Municipal League, 1967. Varied paging.

Includes: "Contents of State Constitutions: Criteria for Inclusion and Exclusion"; "Judicial Doctrines of Construction Affecting Constitutional Provisions"; "Notes for a Manual on the Drafting of State Constitutions."

MAJOR PROBLEMS IN STATE CONSTITUTIONAL REVISION, edited by W. Brooke Graves. Public Administration Service, 1960. 306 pp.

Discusses methods and procedures of constitutional change; has a chapter on "What Should a State Constitution Contain?" and chapters on the principal subjects.

MODEL STATE CONSTITUTION. National Municipal League, 6th edition, 1968. 118 pp.

Proposed articles for a state constitution, with commentary on each.

MODERNIZING STATE CONSTITUTIONS, 1966-1972. The Council of State Governments, 1973. 50 pp.

OUTLOOK FOR THE 70'S: STATE CONSTITUTIONAL REVISION. League of Women Voters of the United States, 1970. 29 pp.

An appendix lists the states in which there has been recent constitutional revision activity.

SALIENT ISSUES OF CONSTITUTIONAL REVISION, John P. Wheeler, editor. National Municipal League, 1961. 172 pp.

Considers three major functions of a constitution: I. "The People and Their State Government" (chapters on civil liberties, suffrage and elections, legislative districts and reapportionment, and methods of constitutional change). II. "The Representatives of the People" (the legislature, governor, courts). III. "The Powers of the State" (taxation and finance, local government, including home rule). Final chapter by John Bebout: "The Central Issue—Constitutional Revision— What For?"

STATE CONSTITUTIONS: THE SHAPE OF THE DOCUMENT, by Robert B. Dishman. National Municipal League, revised edition, 1968. 72 pp.

THIRTY YEARS OF STATE CONSTITUTION MAKING: 1938-1968, by Albert L. Sturm. National Municipal League, 1970. 155 pp.


For the most recent activity pertaining to state constitutions, see monthly issues of NATIONAL CIVIC REVIEW (published by the National Municipal League).

The Minnesota Legislative Reference Library has reports from 24 states which describe in detail the workings and decisions of constitutional conventions and commissions. Reports of Illinois and Hawaii comprise several particularly helpful volumes.

## Materials Relating to Minnesota


A HISTORY OF THE CONSTITUTION OF MINNESOTA, with the first verified text, by William Anderson and Albert J. Lobb. University of Minnesota Research Publications, Studies in the Social Sciences No. 15, 1921. 323 pp.

Partial contents: "The Pre-Territorial Period"; "Preliminaries of Statehood"; "Electing and Organizing the Constitutional Convention"; "The Compromise Constitution"; "Minnesota Enters the Union"; "How the Constitution Develops"; "The Amendments to the Constitution." Also table showing the differences between the Republican and the Democratic originals of the Minnesota Constitution; table of amendments proposed 1857-1919; bibliography, including archives, newspapers, etc.

AMENDMENTS TO THE MINNESOTA CONSTITUTION ADOPTED 1857 TO DATE. Minnesota Legislative Manual, 1969-1970, pp. 374-383.

Includes a brief history of the Constitution, including a list of obsolete constitutional provisions removed by an amendment adopted in 1964.

CONSTITUTIONAL CHANGE BY AMENDMENT: RECOMMENDATIONS OF THE MINNESOTA CONSTITUTIONAL COMMISSION IN TEN YEARS' PERSPECTIVE, by G. Theodore Mitau, *Minnesota Law Review* 44:461-483, 1960.

CONSTITUTIONAL COMMISSION OF MINNESOTA REPORT. October, 1948. 120 pp.

CONSTITUTIONAL REVISION. League of Women Voters of Minnesota, 1967. 4 pp.

## APPENDIX A — ACTION TAKEN ON MAJOR RECOMMENDATIONS OF THE 1948 COMMISSION

| | |
|---|---|
| **Legislature (Article IV)** | |
| Allow extended sessions, annual sessions | 1962 amendment extended sessions, 1972 amendment allowed flexible sessions |
| Empower legislature to call special sessions | No action taken; recommended by 1972 Commission |
| Provide greater power over procedures | No amendment passed; some recommendations made by 1972 Commission; present practice accomplishes other objectives |
| Allow legislators to resign and run for other offices | 1968 amendment |
| Provide backup reapportionment commission | No action taken; substitute reapportionment agency recommended by 1972 Commission |
| **Executive (Article V)** | |
| Eliminate constitutional-elective secretary of state, auditor, treasurer | No action taken; similar action for secretary of state and auditor recommended by 1972 Commission |
| Extend terms of executive officers to four years | 1958 amendment |
| Require governor to submit budget message three weeks after taking office | Present practice |
| Provide for a constitutionally established civil service | No action taken |
| Remove chief justice from pardon board | No action taken; recommended by 1972 Commission |
| Clarify succession to office of governor | 1960 amendment; further action recommended by 1972 Commission for governor and lieutenant governor |
| Allow lieutenant governor's salary to be set by the legislature | 1972 amendment |
| Empower governor to limit matters considered by special sessions | Present practice |
| **Judiciary (Article VI)** | |
| Make clerk of supreme court appointive by court | 1956 amendment |
| Set terms of all judges at six years | 1956 amendment |
| Delete justice of peace | 1956 amendment |
| Statutory, not constitutional, provisions on district court | 1956 amendment |
| Extend district court clerk term to six years | 1956 amendment |
| Make state law librarian appointive by court | 1956 amendment |
| Clarify retirement and removal provisions | 1972 amendment |
| Create administrative council | No constitutional action taken; provided by statute; amendment recommended by 1972 Commission |
| Create merit plan for selection of supreme court justices | No action taken; not recommended by 1972 Commission |
| Allow temporary assignment of district judges to supreme court | 1956 amendment; 1972 amendment |
| **Local Government (Article XI)** | |
| Allow certain special legislation | 1958 amendment |
| Ease restrictions on home rule | 1958 amendment; simplification recommended by 1972 Commission |
| Ease restrictions on charter commissions | 1958 amendment; change recommended by 1972 Commission |
| **Highways (Article XVI)** | |
| Consolidate language on finances | 1956 amendment |
| Delete specific reference to highway routes | 1956 amendment |
| **Taxation and Finance (Article IX unless otherwise indicated)** | |
| Eliminate debt limitation | 1962 amendment |
| Restrict changes in taconite taxation | 1964 amendment |
| Eliminate language on banking laws | 1954 amendment (partial deletion) |
| Delete reference to railroad gross earnings and referendum | No action taken; deletion recommended by 1972 Commission |
| Consolidate and simplify trust fund provisions (IV, 32(b); VIII) | 1956 amendment; 1962 amendment (partial consolidation); further consolidation recommended by 1972 Commission |
| Allow legislature to deal with tax-exempt property | 1970 amendment |
| Create legislative post-auditor | No action taken |
| **Constitutional Revision (Article XIV)** | |
| Require two-thirds of legislature to propose amendments | No action taken; retention of simple majority recommended by 1972 Commission |
| Require majority voting on question to ratify amendments | No action taken; present majority of all electors or 55% of voters on question recommended by 1972 Commission |
| Allow submission of amendments or new constitution at special election | No action taken; recommended by 1972 Commission |
| Require periodic submission of question of calling a constitutional convention | No action taken; not recommended by 1972 Commission in view of other liberalizations |
| Provide that question of calling a convention require only a majority vote of legislature | No action taken; recommended by 1972 Commission |
| Require that a new constitution be ratified by the voters | 1954 amendment |
| Allow submission of amendments on "one general subject" | No action taken. Because of liberal judicial interpretation not recommended by 1972 Commission |

## APPENDIX B—CONSTITUTIONAL STUDY COMMISSIONS OPERATIVE BETWEEN 1968 AND 1972[1]

| State | Number of Members | Appropriation | Duration | Action |
|---|---|---|---|---|
| Alabama | 25: 2 ex officio, 23 appointed, representing all congressional districts | $100,000 (70-71) | 1969- | Interim 1971 report recommended changes in five areas. Final report due May 1973, to propose total revision |
| Arkansas | 30: 10 appointed by gov., 5 by ch. justice, 5 by spkr. of hs., 5 by pres. of sen., 5 by bar assn. | $100,000 | 1967-68 | Recommended constitutional convention (unsuccessful). Proposed new document |
| California | 74: 14 ex officio legislators; 60 appointed by Jt. Comm. on Legislative Organization | Open-ended (at least $2,883,315) | 1963-71 | Proposed series of amendments almost completely revising constitution over several elections |
| Delaware | 15: 5 appointed by gov., 5 by pres. of sen., 5 by spkr. of hs., representing all counties, Wilmington and both parties | $25,000 plus foundation aid | 1967-69 | Submitted new constitution |
| Georgia | 28: 7 ex officio, 5 legislators, 16 appointed by governor | $75,000 | 6 mos. in 1969; much done by 1965-69 comm. | Submitted new constitution |
| Idaho | 15: 5 appointed by leg. council, 5 by gov., 5 by chief justice | $47,000 | 1965-69 | Submitted new constitution, revised by legislature and rejected by voters in 1970 |
| Illinois | 26: 10 appointed by gov., 8 by spkr. of hs., 8 by pres. of sen. (equal party representation) | $75,000 | 1967-69 | Recommended constitutional convention (successfully held) and permanent commission |
| Indiana | 34: 16 appointed by lt. gov., 16 by spkr. of hs., 1 by gov., 1 by sup. court (equal party representation) | Open-ended | 1967-71 | Recommended series of amendments and permanent commission |
| Kansas | 12: 3 appointed by gov., 3 by pres. of sen., 3 by spkr. of hs., 3 by ch. justice | $31,840 | 9 mos. in 1968-69 | Recommended extensive change |
| Louisiana | 48: 27 legislators, clerk of hs., sec. of sen., lt. gov., 18 appointed by specific organizations | $100,000 | 1970-72 | Requested to report to each session till total revision completed. Reported 1971 and 1972 |
| Minnesota | 21: 6 appointed by each house, 1 by ch. justice, 8 by gov. | $25,000 | 1971-72 | Recommended phased revision, 5 priority amendments for 1973, and another study commission |
| Montana | 16: 4 appointed by each house, by gov., by ch. justice (equal party representation) | $50,000 | 1969-71 | Recommended constitutional convention (successfully held) |
| Nebraska | 12: 6 appointed by leg., 3 by gov., 3 by sup. ct., representing all congressional districts | $75,000 | 1969-70 | Recommended series of amendments |
| New Mexico | 11 appointed by gov., representing all judicial districts and both parties; 4 advisory legislators | $138,000 | 1963-69 | Recommended constitutional convention (unsuccessful) and new document |
| North Carolina | 25, appointed by bar assn. (15 lawyers, 10 non-lawyers) | $25,000 foundation grant | 9 mo. in 1969 | Recommended 10 extensive amendment changes, submitted as series by legislature |
| Ohio | 32: all appointed, 12 from legislature | $100,000 first biennium, now $150,000 a year | 1969-79 | Requested to report each two years. Began reports in 1971 |
| Oklahoma | 21, all appointed: 11 legislators, 10 others representing all congressional districts | $25,000 | 6 mo. in 1969 | Recommended extensive changes in major articles |
| South Carolina | 12: lt. gov., spkr. of hs., 6 legislators, 4 appointed by gov. | about $40,000 | 1966-69 | Recommended 17 articles to substitute for present constitution. 5 approved, 1970; 5 more, 1972 |
| South Dakota | 13: 11 appointed, 2 ex officio, representing both parties | $25,000 initially; $111,500 thru 1973 | 1969-75 | Recommending series of articles |

## APPENDIX B—CONSTITUTIONAL STUDY COMMISSIONS OPERATIVE BETWEEN 1968 AND 1972[1]—Continued

| State | Number of Members | Appropriation | Duration | Action |
|---|---|---|---|---|
| Texas | 25: 10 legislators, 10 appointed by gov., 5 by ch. justice | Open-ended | 1967-68 | Submitted revised document |
| Utah | 16: 9 appointed to select 6 others, 1 ex officio | $20,000 first yr. $30,000 a yr. thereafter | 1969-75 | Recommending series of amendments; new legislative article adopted 1972 |
| Vermont | 11: ch. justice, atty. gen., 6 legislators, 3 appointed by gov. | $2,000 | 1968-71 | Recommended limited constitutional convention, 1968; 15 proposals in 11 areas, 1971 |
| Virginia | 11 appointed by gov. | $75,000 | 9 mos. in 1968-69 | Submitted revised document; approved 1970 as proposed |
| Washington | 20: 2 ex officio, 18 appointed by gov. | Up to $25,000 | 1968-69 | Recommended gateway amendment and phased revision; submitted 8 model articles |

[1]Data from *Book of States* for 1970-71 (pp. 22-25) and 1972-73 (pp. 17-19); and Appendix B of *Modernizing State Constitutions, 1966-1972,* both published by the Council of State Governments.

## APPENDIX C — TEXT OF FORM REVISION OF THE CONSTITUTION OF THE STATE OF MINNESOTA

### (As Recommended to the 1973 Legislature by the Constitutional Study Commission)



*Preamble. We, the people of the State of Minnesota, grateful to God for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and our posterity, do ordain and establish this Constitution:*

### ARTICLE I
### Bill of Rights

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 government, whenever the public good may require.

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 than as punishment for a crime of which the party 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. A jury trial may be waived by the parties in all cases in the manner prescribed by law. The legislature may provide that the agreement of five-sixths of a jury in a civil action or proceeding, after not less than six hours' deliberation, is a sufficient verdict.

NO EXCESSIVE BAIL OR UNUSUAL PUNISHMENTS. Sec. 5. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments 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 was committed, which county or district shall have been previously ascertained by law. 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 shall be put twice in jeopardy of punishment for the same offense, nor 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 before conviction shall be bailable by sufficient sureties. The privilege of the writ of habeas corpus shall not be suspended unless the public safety requires it in cases of rebellion or invasion.

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, and 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 consists only in levying war against the 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.

PROHIBITION EX POST FACTO LAWS, OR LAWS IMPAIRING CONTRACTS. Sec. 11. No bill of attainder, ex post facto law, or any law impairing the obligation of contracts shall 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 the legislature may provide for imprisonment or holding to bail persons charged with fraud in contracting a debt. A reasonable amount of property shall be exempt by law from seizure or sale for the payment of a debt or liability. All property exempted shall be liable to seizure and sale for debts incurred to any person for work done or materials furnished in the construction, repair or improvement of the property and for any debt 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 maintained in this state in times of peace.

LANDS DECLARED ALLODIAL; LEASES, WHEN VOID. Sec. 15. All lands within the state are allodial and feudal tenures of every description, with all their incidents, are prohibited. Leases and grants of agricultural lands for a longer period than 21 years 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 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 be required as a qualification for any office of public trust under the state. No religious test or amount of property shall 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.

## ARTICLE II
### Name and Boundaries

NAME AND BOUNDARIES. Section 1. This state shall be called the state of Minnesota and shall 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," and the propositions contained in that act are hereby accepted, ratified and confirmed, and shall remain irrevocable without the consent of the United States.

JURISDICTION ON BORDERING RIVERS. Sec. 2. The state of Minnesota has concurrent jurisdiction on all rivers and waters forming a common boundary with any other state or states. Navigable waters shall be common highways and forever free to citizens of the United States without any tax, duty, impost or toll therefor.

## ARTICLE III
### Distribution of the Powers of Government

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

HOUSE AND SENATE. Section 1. The legislature consists of the senate and house of representatives.

NUMBER AND 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. The representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof.

APPORTIONMENT. Sec. 3. At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall prescribe the bounds of congressional districts and apportion anew the senators and representatives. Senators shall be chosen by single districts of convenient contiguous territory. No representative district shall be divided in the formation of a senate district. The senate districts shall be numbered in a regular series.

TERMS OF OFFICE. Sec. 4. Representatives shall hold office for a term of two years, except to fill a vacancy. Senators shall hold office 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. The governor shall issue writs of election to fill vacancies in either house of the legislature.

RESTRICTION AS TO HOLDING OFFICE. Sec. 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.

QUALIFICATION OF LEGISLATORS. Sec. 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 elected. Each house shall be the judge of the election returns and eligibility of its own members. The legislature shall prescribe by law the manner for taking evidence in cases of contested seats in either house.

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.

OATH OF OFFICE. Sec. 8. Each member and officer of the legislature before entering upon his duties shall take and subscribe an oath or affirmation to support the constitution of the United States and the constitution of this state and faithfully to discharge the duties of his office to the best of his judgment and ability.

COMPENSATION. Sec. 9. The compensation of senators and representatives shall be prescribed by law. No increase of compensation shall take effect during the period for which the members of the existing house of representatives have been elected.

PRIVILEGE FROM ARREST. Sec. 10. The members of each house 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.

PROTEST AND DISSENT OF MEMBERS. Sec. 11. Two or more members of either house may dissent and protest against any act or resolution which they think injurious to the public or to any individual and have the reason of their dissent entered on the journal.

LEGISLATURE MEETS BIENNIALLY; LENGTH OF SESSION. Sec. 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 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.

Neither house during a session of the legislature shall 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.

QUORUM. Sec. 13. A majority of each house constitutes a quorum to transact business, but a smaller number may adjourn from day to day and compel the attendance of absent members in the manner and under the penalties it may provide.

OPEN SESSIONS. Sec. 14. Each house shall be open to the public during its sessions except in such cases as in its opinion require secrecy.

OFFICERS; JOURNAL OF PROCEEDINGS. Sec. 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 the journals.

ELECTIONS VIVA VOCE. Sec. 16. In all elections by the legislature, members shall vote viva voce, and their votes shall be entered on the journal.

LAWS TO EMBRACE ONLY ONE SUBJECT. Sec. 17. No law shall embrace more than one subject, which shall be expressed in its title.

BILLS OF REVENUE TO ORIGINATE IN HOUSE. Sec. 18. All bills for raising revenue shall originate in the house of representatives, but the senate may propose amendments as on other bills.

READING OF BILLS. Sec. 19. Every bill shall be reported three different days in each house, unless, in case of urgency, two-thirds of the house where the bill is pending deem it expedient to dispense with this rule.

ENROLLMENT OF BILLS. Sec. 20. Every bill passed by both houses shall be enrolled and signed by the presiding officer of each house. Any presiding officer refusing to sign a bill passed by both houses shall thereafter be disqualified from any office of honor or profit in the state. Each house by rule shall provide the manner in which a bill shall be certified for presentation to the governor in case of such refusal.

PASSAGE OF BILLS ON LAST DAY OF SESSION PROHIBITED. Sec. 21. No bill shall be passed by either house upon the day prescribed for the adjournment of the session in any year. This section shall not preclude the enrollment of a bill or its transmittal from one house to the other or to the executive for his signature.

MAJORITY VOTE OF ALL MEMBERS-ELECT TO PASS A LAW. Sec. 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 house of the legislature, and the vote entered on the journal of each house.

APPROVAL OF BILLS BY GOVERNOR; ACTION ON NON-APPROVAL. Sec. 23. Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it, deposit it in the office of secretary of state and notify the house in which it originated of that fact. If he disapproves a bill, he shall return it with his objections to the house in which it originated. His objections shall be entered on the journal. If, after reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the governor's objections, to the other house, which shall likewise reconsider it. If approved by two-thirds of that house it becomes a law and shall be deposited in the office of the secretary of state. In 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. Any bill not returned by the governor within three days (Sundays excepted) after it is presented to him becomes a law as if he had signed it, unless the legislature by adjournment within that time prevents its return. Any bill passed during the last three days of a session for any year may be presented to the governor during the three days following the day of final adjournment and becomes law if the governor signs and deposits it in the office of the secretary of state within 14 days after the adjournment of the legislature. Any bill passed during the last three days of the session for any year which is not signed and deposited within 14 days after adjournment does not become a law.

If a bill presented to the governor contains several items of appropriation of money, he may disapprove one or more of the items, while approving the bill. At the time he signs the bill the governor shall append to it a statement of the items he disapproves and the disapproved items shall not take effect. If the legislature is in session, he shall transmit to the house in which the bill originated a copy of the statement, and the items disapproved shall be separately reconsidered. If on reconsideration any item is approved by two-thirds of the members elected to each house, it is a part of the law notwithstanding the objections of the governor.

DISAPPROVAL OF RESOLUTIONS. Sec. 24. Each order, resolution or vote requiring the concurrence of the two houses, except such as relate to the business or adjournment of the legislature, shall be presented to the governor and is subject to his disapproval as prescribed in case of a bill.

PUNISHMENT FOR DISORDERLY CONDUCT. Sec. 25. During a session each house may punish by imprisonment for not more than twenty-four hours any person not a member guilty of disorderly or contemptuous behavior in its presence.

BANKING LAW. Sec. 26. To pass a general banking law requires the vote of two-thirds of the members of each house of the legislature.

## ARTICLE V
### Executive Department

OFFICERS IN EXECUTIVE DEPARTMENT. Section 1. The executive department consists of a governor, lieutenant governor, secretary of state, auditor, treasurer and attorney general, who shall be chosen by the electors of the state. The governor and lieutenant governor shall be chosen by a single vote applying to both offices in a manner prescribed by law.

OFFICIAL TERM OF GOVERNOR AND LIEUTENANT GOVERNOR; QUALIFICATIONS. Sec. 2. The term for governor and lieutenant governor is four years and until a successor is chosen and qualified. Each shall have attained the age of 25 years, shall have been a resident of the state for one year next preceding his election and shall be a citizen of the United States.

POWERS AND DUTIES OF GOVERNOR. Sec. 3. The governor shall communicate by message to each session of the legislature information touching the state and country. He is commander-in-chief of the military and naval forces and may call them out 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 their duties. With the advice and consent of the senate he may appoint notaries public and other officers provided by law. He may appoint commissioners to take the acknowledgment of deeds or other instruments in writing to be used in the state. He shall take care that the laws be faithfully executed. He shall fill any vacancy that may occur in the offices of the secretary of state, treasurer, auditor, attorney general, and the other state and district offices 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 a successor is chosen and qualified.

OFFICIAL TERM OF OTHER EXECUTIVE OFFICERS. Sec. 4. The terms of the secretary of state, treasurer, attorney general and state auditor are four years, and until a successor is chosen and qualified. The duties and salaries of the executive officers shall be prescribed by law.

DUTIES OF LIEUTENANT GOVERNOR AND SUCCESSION TO OFFICE OF GOVERNOR DURING EMERGENCY. Sec. 5. In case a vacancy occurs, from any cause whatever, in the office of governor, the lieutenant governor shall be governor during such vacancy. The compensation of the lieutenant governor shall be prescribed by law. The last elected presiding officer of the senate shall become lieutenant governor in case a vacancy occurs in that office. In case the governor is unable to discharge the powers and duties of his office, the same devolves on the lieutenant governor. The legislature may provide by law 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.

OATH OF OFFICE TO BE TAKEN BY STATE OFFICERS. Sec. 6. Each officer created by this article 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 to faithfully discharge the duties of his office to the best of his judgment and ability.

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.

## ARTICLE VI

### Judiciary

JUDICIAL POWER. Section 1. 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 district court as the legislature may establish.

SUPREME COURT. Sec. 2. The supreme court consists of one chief judge and not less than six or more than eight associate judges as the legislature may establish. It shall have original jurisdiction in such remedial cases as are prescribed by law, and appellate jurisdiction in all cases, but there shall be no trial by jury in the supreme court.

As provided by law judges of the district court may be assigned temporarily to act as judges of the supreme court upon its request.

The supreme court shall appoint to serve at its pleasure a clerk, a reporter, a state law librarian and other necessary employees.

JURISDICTION OF DISTRICT COURT. Sec. 3. The district court has original jurisdiction in all civil and criminal cases and shall have appellate jurisdiction prescribed by law.

JUDICIAL DISTRICTS; DISTRICT JUDGES. Sec. 4. The number and boundaries of judicial districts shall be established 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 district. Each judge of the district court in any district shall be a resident of that district at the time of his selection and during his continuance in office.

QUALIFICATIONS; COMPENSATION. Sec. 5. Judges of the supreme court and the district court shall be learned in the law. The qualifications of all other judges and judicial officers shall be prescribed by law. The compensation of all judges shall be prescribed by the legislature and shall not be diminished during their term of office.

HOLDING OTHER OFFICE. Sec. 6. A judge of the supreme court or district court shall not hold any 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. His term of office shall terminate at the time he files as a candidate for an elective office of the United States or for a nonjudicial office of this state.

TERMS OF OFFICE; ELECTION; REELECTION. Sec. 7. The term of office of all judges shall be six years and until their successors are qualified, and they shall be elected in the manner provided by law by the electors of the territory wherein they are to serve.

VACANCY. Sec. 8. Whenever there is a vacancy in the office of judge the governor shall appoint in the manner provided by law a qualified person to fill the vacancy until a successor is elected and qualified. The successor shall be elected for a six-year term at the next general election occurring more than one year after appointment.

RETIREMENT. Sec. 9. The legislature may provide by law for retirement of all judges, for the extension of the term of any judge who becomes eligible for retirement within three years after expiration of the term for which he is selected 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.

RETIRED JUDGES. Sec. 10. As provided by law a retired judge may be assigned to hear and decide any cause over which the court to which he is assigned has jurisdiction.

JURISDICTION OF PROBATE COURT. Sec. 11. Original jurisdiction in law and equity for the administration of the estates of deceased persons and all guardianship and incompetency proceedings, including jurisdiction over the administration of trust estates and for the determination of taxes contingent upon death shall be provided by law.

PROBATE JUDGES. Sec. 12. If the probate court is abolished by law, judges of that court who are learned in the law shall become judges of the court that assumes jurisdiction of matters described in section 11.

DISTRICT COURT CLERKS. Sec. 13. There shall be in each county one clerk of the district court whose qualifications, duties and compensation shall be prescribed by law. He shall serve at the pleasure of a majority of the judges of the district court in his district.

## ARTICLE VII

### Elective Franchise

ELECTIVE FRANCHISE. Section 1. Every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 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 30 days preceding the election shall be prescribed by law. A person not meeting the above requirements; a person who has been convicted of treason or felony, unless restored to civil rights; a person under guardianship; or a person who is non compos

mentis or insane; shall not be entitled or permitted to vote at any election in this state.

RESIDENCE NOT LOST IN CERTAIN CASES. Sec. 2. For the purpose of voting no person 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. No soldier, seaman or marine in the army or navy of the United States is a resident of this state solely in consequence of being stationed within the state.

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.

CIVIL PROCESS SUSPENDED ON ELECTION DAY. Sec. 4. During the day on which an election is held no person shall be arrested by virtue of any civil process.

ELECTIONS BY BALLOTS. Sec. 5. 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. 6. Every person who by the provisions of this article is entitled to vote at any election and is 21 years of age is eligible for any office elective by the people in the district wherein he has resided 30 days previous to the election, except as otherwise provided in this constitution or the constitution and law of the United States.

OFFICIAL YEAR OF THE STATE. Sec. 7. The official year for the state of Minnesota commences on the first Monday in 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 in each even-numbered year.

ELECTION RETURNS TO BE SENT TO SECRETARY OF STATE. Sec. 8. The returns of every election for 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. They shall constitute a board of canvassers to canvass the returns and declare the result within three days after the canvass.

## ARTICLE VIII

### Impeachment and Removal from Office

IMPEACHMENT POWERS. Section 1. The house of representatives has the sole power of impeachment through a concurrence of a majority of all its members. All impeachments shall be tried by the senate. When sitting for that purpose, 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 senators present.

IMPEACHMENT AND REMOVAL FROM OFFICE. Sec. 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 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 shall also be subject to indictment, trial, judgment and punishment according to law.

Sec. 3. No officer shall exercise the duties of his office after he has been impeached and before his acquittal.

Sec. 4. No person shall be tried on impeachment before he has been served with a copy thereof at least 20 days previous to the day set for trial.

Sec. 5. The legislature of this state may provide for the removal of inferior officers for malfeasance or nonfeasance in the performance of their duties.

## ARTICLE IX

### Amendments to the Constitution

AMENDMENTS TO CONSTITUTION; MAJORITY VOTE OF ELECTORS VOTING MAKES AMENDMENT VALID. Section 1. A majority of the members elected to each house of the legislature may propose amendments to this constitution. Proposed amendments shall be published with the laws passed at the same session and submitted to the people for their approval or rejection at a general election. If a majority of all the electors voting at the election vote to ratify an amendment, it becomes a part of this constitution. If two or more amendments are submitted at the same time, voters shall vote for or against each separately.

REVISION OF CONSTITUTION. Sec. 2. Two-thirds of the members elected to each house of the legislature may submit to the electors at the next general election the question of calling a convention to revise this constitution. If a majority of all electors voting at the election vote for a convention, the legislature at its next session shall provide by law for calling the convention. The convention shall consist of as many delegates as there are members of the house of representatives. Delegates shall be chosen in the same manner as members of the house of representatives and shall meet within three months after their election. Section 5 of Article IV of the constitution does not apply to election to the convention.

SUBMISSION TO PEOPLE OF REVISED CONSTITUTION DRAFTED AT CONVENTION. Sec. 3. A convention called to revise this constitution shall submit any revision to the people for approval or rejection at the next general election held not less than 90 days after submission of the revision. If three-fifths of all the electors voting on the question vote to ratify the revision, it becomes a new constitution of the state of Minnesota.

## ARTICLE X

### Taxation

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 seminaries of learning, 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. 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 determines. The legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to cash valuation. The legislature by law may define or limit the property exempt under this section other than churches, houses of worship and property used solely for educational purposes by academies, colleges, universities and seminaries of learning.

FORESTATION AND REFORESTATION. Sec. 2. To encourage and promote forestation and reforestation of lands in this state, whether owned by private persons or the public,

laws may be enacted fixing in advance a definite and limited annual tax on such lands for a term of years and imposing a yield tax upon the timber and other forest products at or after the end of the term.

OCCUPATION TAX. Sec. 3. Every person engaged in the business of mining or producing iron ore or other ores in this state shall pay to the state 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 tax is due on May first of the calendar year next following the mining or producing. The valuation of ore for the purpose of determining the amount of tax shall be ascertained as provided by law. Funds derived from the tax 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.

AIRCRAFT FUEL. Sec. 4. The state may levy an excise tax upon any fluids or other means or instrumentalities for propelling aircraft or for propelling motor or other vehicles or other equipment used for airport purposes and not used on the public highways of this state.

AIRCRAFT TAX. Sec. 5. The legislature may tax on a more onerous basis than other personal property aircraft using the air space overlying the state and the airports thereof. Any such tax on aircraft shall be in lieu of all other taxes. The legislature may impose the tax upon aircraft of companies paying taxes under any gross earnings system of taxation notwithstanding that earnings from the aircraft are included in the earnings upon which gross earnings taxes are computed. The law may exempt from taxation aircraft owned by a nonresident of the state and temporarily using the air space overlying the state or its airports.

TACONITE TAXATION. Sec. 6. 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, 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) the mining, production or beneficiation of copper-nickel, or (3) 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.

CHANGE OF FORM OF TAXATION OF RAILROADS TO BE VOTED UPON. Sec. 7. Any law heretofore or hereafter enacted which provides that railroad companies shall pay a certain percentage of their gross earnings in lieu of all other taxes and assessments upon their real estate, roads, rolling stock and other personal property may be amended or repealed only by a law ratified by a majority of the electors of the state voting at a general election.

## ARTICLE XI

### Appropriations and Finances

APPROPRIATIONS REQUIRED. Section 1. No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.

CREDIT OF THE STATE LIMITED. Sec. 2. The credit of the state shall never be given or loaned in aid of any individual, association or corporation except as hereinafter provided.

INTERNAL IMPROVEMENTS. Sec. 3. The state shall never be a party in carrying on works of internal improvements except as authorized by this constitution. If grants have been made to the state especially dedicated to specific purposes the state shall devote the avails of the grants to those purposes and may pledge or appropriate the revenues derived from the works in aid of their completion.

POWER TO CONTRACT PUBLIC DEBTS. Sec. 4. The state may contract public debts for which its full faith, credit and taxing powers may be pledged at the times and in the manner authorized by law, but only for the purposes and subject to the conditions stated in section 5. Public debt includes any obligation payable directly in whole or in part from a tax of statewide application on any class of property, income, transaction or privilege, but does not include any obligation which is payable from revenues other than taxes.

PURPOSES OF DEBT; AUTHORIZED IMPROVEMENTS. Sec. 5. Public debt may be contracted and works of internal improvements carried on for the following purposes:

(a) to acquire and to better public land and buildings and other public improvements of a capital nature and to provide monies to be appropriated or loaned to any agency or political subdivision of the state for such purposes if the law authorizing the debt is adopted by the vote of at least three-fifths of the members of each house of the legislature;

(b) to repel invasion or suppress insurrection in time of war;

(c) to borrow temporarily as authorized in section 6;

(d) to refund 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 the bonds;

(e) to establish and maintain highways subject to the limitations of Article XIV;

(f) to promote forestation and prevent and abate forest fires, including the compulsory clearing and improving of wild lands whether public or private;

(g) to construct, improve and operate airports and other air navigation facilities;

(h) to develop the state's agricultural resources by extending credit upon real estate security in the manner and upon the terms prescribed by law;

and (i) as otherwise authorized in this constitution.

As authorized by law political subdivisions may engage in the works permitted by (f) and (g) and contract debt therefor.

Sec. 6. As authorized by law certificates of indebtedness may be issued during 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 certificates shall be issued in an amount which with interest thereon to maturity, added to the then outstanding certificates against a fund and interest thereon to maturity, will exceed the then unexpended balance of all monies which will be credited to that fund during the biennium under existing laws. The maturities of 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 the certificates were issued. If monies on hand in any fund are not sufficient to pay all non-refunding certificates refunding the same, plus interest thereon, which are outstanding on December 1 immediately following the close of the biennium, the state auditor shall levy upon all taxable property in the state a tax collectible in the ensuing year sufficient to pay the same on or before

December 1 of the ensuing year with interest to the date or dates of payment.

Sec. 7. Public debt other than certificates of indebtedness authorized in section 6 shall be evidenced by the issuance of bonds of the state. All bonds issued under the provisions of this section shall mature not more than 20 years from their respective dates of issue and each law authorizing the issuance of bonds shall distinctly specify the 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. When the full faith and credit of the state has been pledged for the payment of 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 bonds issued under this section due and to become due within the ensuing year and to and including July 1 in the second ensuing year. The legislature by law may appropriate funds from any source to the state bond fund. The amount of monies actually received and on hand pursuant to appropriations prior to the levy of the tax in any year shall be used to reduce the amount of tax otherwise required to be levied.

PERMANENT SCHOOL FUND; SOURCE; INVESTMENT. Sec. 8. The permanent school fund of the state consists of (a) the proceeds of lands granted by the United States for the use of schools within each township, (b) the proceeds derived from swamp lands granted to the state, (c) all cash and investments credited to the permanent school fund and to the swamp land fund, and (d) all cash and investments credited to the internal improvement land fund and the lands therein. No portion of 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 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 and with the approval of the state board of investment the fund 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 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 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. This does not prevent the sale of any public or private stocks or bonds at less than the cost to the fund; however, all losses not offset by gains shall be repaid to the fund from the interest and dividends earned thereafter. The net interest and dividends arising from the fund shall be distributed to the different school districts of the state in proportion to the number of students in each district between the ages of five and 21 years.

A board of investment consisting of the governor, the state auditor, the state treasurer, the secretary of state and the attorney general is hereby constituted for the purpose of administering and directing the investment of all state funds. The state board of investment shall not permit state funds to be used for the underwriting or direct purchase of municipal securities from the issuer or his agent.

INVESTMENT OF PERMANENT UNIVERSITY FUND. Sec. 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 investment designated by law to regulate the investment of the funds of this state; nor shall a 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 the bonds; nor shall any farm loan or investment be made when the investment or loan would exceed 30 percent of the actual cash value of the farm land mortgaged to secure the investment; nor shall 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.

EXCHANGE OF PUBLIC LANDS; RESERVATION OF RIGHTS. Sec. 10. As the legislature may provide, any of the public lands of the state, including lands held in trust for any purpose, with the unanimous approval of a commission consisting of the governor, the attorney general and the state auditor, may be exchanged for lands of the United States or privately owned lands. Lands so acquired shall be subject to the trust, if any, to which the lands exchanged therefor were subject. The state shall reserve all mineral and water power rights in lands transferred by the state.

TIMBER LANDS SET APART AS STATE FORESTS; DISPOSITION OF REVENUE. Sec. 11. Such of the school and other public lands of the state 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. The legislature may provide for their management on forestry principles. The net revenue therefrom shall be used for the purposes for which the lands were granted to the state.

COUNTY, CITY OR TOWNSHIP AID TO RAILROADS LIMITED. Sec. 12. The legislature shall not authorize any county, township or municipal corporation to become indebted to aid in the construction or equipment of railroads to any amount that exceeds five per cent of the value of the taxable property within the county, township or municipal corporation. The amount of the taxable property shall be determined by the last assessment previous to the incurring of the indebtedness.

STATE SCHOOL FUND; INVESTMENT; SAFE KEEPING; ALL STATE FUNDS TO BE DEPOSITED IN NAME OF STATE. Sec. 13. All officers and other persons charged with the safekeeping of state funds shall be required to give ample security for funds received by them; to keep an accurate entry of each sum received and of each payment and transfer. If any person converts 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.

## ARTICLE XII

### Special Legislation; Local Government

AGAINST SPECIAL LEGISLATION. Section 1. In all cases when a general law can be made applicable, a special law shall not be enacted except as provided in section 2. Whether a general law could have been made applicable in any case 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 of 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 prevent the passage of general laws on any of the subjects enumerated.

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 of 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 laws, but shall not amend, extend or modify any of the same except as in this section.

LOCAL GOVERNMENT, LEGISLATION AFFECTING. Sec. 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 of boundaries thereof, for their elective and appointive officers including qualifications for office and for the transfer of county seats. A county boundary may not be changed or county seat transferred until approved in each county affected by a majority of the voters voting on the question.

HOME RULE CHARTERS. Sec. 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. A charter shall become effective if approved by such majority of the voters of the local government unit as the legislature prescribes by general law. If a charter provides for the consolidation or separation of a city or 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. 5. The legislature shall provide by law for charter commissions. Notwithstanding any other constitutional limitations the legislature may require that commission members 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.

## ARTICLE XIII

### Miscellaneous Subjects

UNIFORM SYSTEM OF PUBLIC SCHOOLS. Section 1. The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.

PROHIBITION AS TO AIDING SECTARIAN SCHOOLS. Sec. 2. In no case shall any public monies 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.

UNIVERSITY OF MINNESOTA. Sec. 3. All the rights, immunities, franchises and endowments heretofore granted or conferred upon the University of Minnesota are perpeutated unto the university.

LANDS TAKEN FOR PUBLIC USE. Sec. 4. Lands may be taken for public way and 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 the lands and for the damages arising from taking it. All corporations which are 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.

PROHIBITION OF LOTTERIES. Sec. 5. The legislature shall not authorize any lottery or the sale of lottery tickets.

AGAINST COMBINATIONS OR POOLS TO AFFECT MARKETS. Sec. 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 a criminal conspiracy and shall be punished as the legislature may provide.

NO LICENSE TO PEDDLE. Sec. 7. Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor.

VETERANS BONUSES. Sec. 8. The state may pay an adjusted compensation to persons who served in the Armed Forces of the United States during the period of the Vietnam conflict. Whenever authorized and in the amounts and on the terms fixed by law, the state may expend monies and may pledge the public credit to provide money for the purposes of this section. The duration of the Vietnam conflict may be defined by law.

MILITIA ORGANIZATION. Sec. 9. The legislature shall pass laws necessary for the organization, discipline and service of the militia of the state.

SEAT OF GOVERNMENT. Sec. 10. The seat of government of the state is at the city of St. Paul. The legislature 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. If the seat of government 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.

STATE SEAL. Sec. 11. A seal of the state shall be kept by the secretary of state and used by him officially. It shall be called the great seal of the state of Minnesota.

## ARTICLE XIV

### Public Highway System

AUTHORITY OF STATE. Section 1. The state may construct and maintain public highways, may assist political subdivisions in such work and by law may authorize any political subdivisions to aid in such work within its boundaries.

TRUNK HIGHWAY SYSTEM. Sec. 2. There is hereby created a trunk highway system which shall be constructed and maintained as public highways by the state. The highways shall extend as nearly as appropriate along the routes number 1 through 70 described in the constitutional amendment adopted November 2, 1920, and the routes described in any act of the legislature which has made or hereafter makes a route a part of the trunk highway system.

The legislature may add by law new routes to the trunk highway system. The trunk highway system may not exceed 12,200 miles in extent, except the legislature may add trunk highways in excess of the mileage limitation as necessary or expedient to take advantage of any federal aid made available by the United States to the state of Minnesota.

Any route added by the legislature to the trunk highway system may be relocated or removed from the system as provided by law. Trunk highways numbered 1 through 70 may be relocated as provided by law but no relocation shall cause a deviation from the starting points or terminals nor cause any deviation from the various villages and cities through which the routes are to pass under the constitutional amendment adopted November 2, 1920. The location of routes may be determined by boards, officers or tribunals in the manner prescribed by law.

COUNTY STATE-AID HIGHWAY SYSTEM. Sec. 3. A county state-aid highway system shall be constructed and maintained by the counties as public highways in the manner provided by law. The system shall include streets in municipalities of less than 5,000 population where necessary to provide an integrated and coordinated highway system and may include similar streets in larger municipalities.

MUNICIPAL STATE-AID STREET SYSTEM. Sec. 4. A municipal state-aid street system shall be constructed and maintained as public highways by municipalities having a population of 5,000 or more in the manner provided by law.

HIGHWAY USER TAX DISTRIBUTION FUND. Sec. 5. There is hereby created a highway user tax distribution fund to be used solely for highway purposes as specified in this article. The fund consists of the proceeds of any taxes authorized by sections 9 and 10 of this article. The net proceeds of the taxes shall be 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. Five percent of the net proceeds of the highway user tax distribution fund may be set aside and apportioned by law to one or more of the three foregoing funds. The balance of the highway user tax distribution fund shall 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 five percent may be made within six years of the last previous change.

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 issued under the authority of section 11 of this article, and any bonds issued for trunk highway purposes prior to July 1, 1957. All payments of principal and interest on bonds shall be a first charge on monies coming into this fund during the year in which the principal or interest is payable.

COUNTY STATE-AID HIGHWAY FUND. Sec. 7. There is hereby created a county state-aid highway fund. The county state-aid highway fund shall be apportioned among the counties as provided by law. The funds apportioned shall be used by the counties as provided by law for aid in the construction and maintenance of county state-aid highways. The legislature may authorize the counties by law to use a part of the funds apportioned to them to aid in the construction 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.

MUNICIPAL STATE-AID STREET FUND. Sec. 8. There is hereby created a municipal state-aid street fund to be apportioned as provided by law among municipalities having a population of 5,000 or more. The fund shall be used by municipalities as provided by law for construction and maintenance of municipal state-aid streets. The legislature may authorize municipalities to use a part of the fund in the construction and maintenance of other municipal streets, trunk highways and county state-aid highways within the counties in which the municipality is located.

TAXATION OF MOTOR VEHICLES. Sec. 9. The state may tax motor vehicles on a more onerous basis than other personal property. 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. The legislature may impose such tax upon motor vehicles of companies paying taxes under the gross earnings system of taxation notwithstanding that earnings from the vehicles may be included in the earnings upon which gross earnings taxes are computed. The law may exempt from taxation any motor vehicle owned by a non-resident of the state properly licensed in another state and transiently or temporarily using the streets and highways of the state. The proceeds of the tax shall be paid into the highway user tax distribution fund.

TAXATION OF MOTOR FUEL. Sec. 10. The state may levy an excise tax upon any substance for propelling vehicles used on the public highways of this state or upon the business of selling it. The proceeds of the tax shall be paid into the highway user tax distribution fund.

BONDS. Sec. 11. The legislature may provide by law for the sale of bonds to carry out the provisions of section 2. Bonds issued and unpaid shall not at any time exceed $150,000,000 par value. The proceeds shall be paid into the trunk highway fund. Any bonds shall mature serially over a term not exceeding 20 years, 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. If the trunk highway fund is not adequate to pay principal and interest of the bonds authorized by the legislature as hereinbefore provided when due, the legislature may levy upon all taxable property of the state in an amount sufficient to meet the deficiency or it may appropriate to the monies in the state treasury not otherwise appropriated.

## APPENDIX D — TEXT OF THE LEGISLATIVE ARTICLE AMENDMENT RELATING TO REAPPORTIONMENT AND SPECIAL SESSIONS

**A bill for an act**

**proposing an amendment to the Minnesota Constitution, Article IV, Sections 1, 2, 23 and 24; providing for periodic redistricting of congressional and legislative seats, terms of legislators and special legislative sessions.**

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

Section 1. The following amendment to the Minnesota Constitution, Article IV, Sections 1, 2, 23 and 24, is proposed to the people. If the amendment is adopted Article IV, Section 1, will read as follows:

Section 1. The legisiature shall consist 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~~ elected by the qualified voters at the general election held in an even numbered year 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 districting provided for in this article. The house of representatives shall be composed of members elected by the qualified voters at the general election held in each even numbered year 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.

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 ~~as otherwise provided by this constitution~~ by the governor as provided by this constitution. The legislature may also call itself into session upon the petition of two-thirds of the members of each house.

Article IV, Section 2, will read as follows:

Sec. 2. 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.~~

Article IV, Section 23, will read as follows:

Sec. 23. ~~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.~~

The entire state shall be divided into as many separate congressional, senatorial and representative election 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.

Congressional, senatorial and representative districts shall be composed of compact and contiguous territory and be as nearly equal in population as is practicable.

Unless absolutely necessary to meet the other standards set forth in this section, no county, city, town, township or ward shall be divided in forming a congressional, senatorial or representative district.

and Article IV, Section 24, will read as follows:

Sec. 24. ~~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 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. Representatives chosen at such election, or at any election thereafter, shall hold their office for the 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 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.~~ (a) In each year following that in which the federal decennial census is officially reported as required by federal law, or whenever a new districting is required by court order, the districting commission created under this section shall prescribe anew the bounds of the congressional, senatorial and representative districts in the state.

The commission shall also prescribe anew the bounds of senatorial or representative districts whenever the number of members who compose the senate or house has been altered by law.

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.

(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 districting commission, as hereinafter provided.

(c) (1) The districting commission shall consist of 13 members and the concurrence of eight of its members shall be required to adopt a final plan of districting.

The speaker and minority leader of the house of representatives, or two representatives appointed by them, shall be members. The majority and minority leaders of the senate, or two senators appointed by them, shall be members.

The governor shall appoint two members. Two 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 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.

Within ten days after the governor has requested the appointment of a districting commission, the speaker and minority leader of the house of representatives, the majority and minority leaders of the senate, the governor and the state executive committees of the political parties, or their successor authorities, shall certify the members of the commission to the secretary of state[1] and notify the secretary of state of any failure to make an appointment.

Within three 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 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 days of their certification and within 17 days 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 of their failure to do so. Within three 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 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) 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.

(3) In making their appointments, the state executive committees, or their successor authorities, the eight original commission members and the state supreme court shall give due consideration to the representation of the various geographical areas of the state.

(4) Any vacancy on the commission shall be filled within five days by the authority that made the original appointment.

(5) A majority of all the members of the commission shall choose a chairman and a vice chairman and establish its rules of procedure.

[1]See note on page 18 above.

(6) Members of the commission shall hold office until the new 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 districting in which they participated.

(7) 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.

(d) (1) Not later than five 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 districting plans and maps of the districts with the secretary of state.

(2) Within ten 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 showing all the new congressional, senatorial and representative districts in the state and a separate map showing the districts in the principal area served by the newspaper in which 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.

(3) The final plans shall have the force and effect of law upon the date of such publications.

(4) The secretary of state shall keep a public record of all the proceedings of the commission.

(e) Within 30 days after any 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 45 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 45 days of the filing of the original petition or 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.

(f) If the commission fails to adopt final plans to prescribe anew the bounds of congressional, senatorial and representative 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 30 days after the date for commission action has expired. Within 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, a majority of the entire membership of the supreme court shall select a panel of three state court judges, other than supreme court justices, to prescribe anew the bounds of congressional districts, or senatorial and representative districts, or both. The panel shall do so within four months after the date for the submission of individual member plans has expired.

The districting prescribed by the panel shall be subject to review by the state supreme court and the federal courts in the manner provided for review of a plan adopted by the districting commission.

(g) Each new districting made in accordance with the provisions of this article shall govern the next succeeding general elections of congressmen, senators and representatives.

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 provide for periodic redistricting of legislative and congressional seats by a commission, to more exactly define legislative terms and to permit the legislature to call itself into session?

Yes.....
No....."

## APPENDIX E — TEXT OF THE AMENDMENT ALLOWING DETERMINATION OF STATE INCOME TAX ON BASIS OF FEDERAL INCOME TAX

**A bill for an act**

**proposing an amendment to the Minnesota Constitution, Article IX, Section 1; permitting as the basis for determining a state tax, either income or a tax on income as determined by federal law.**

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

Section 1. The following amendment to Minnesota Constitution, 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 of taxation shall never be surrendered, suspended or contracted away, but a law may prospectively or otherwise adopt as the basis for determining a Minnesota tax, either income or a tax on income as determined by existing or subsequent laws of the United States. 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 people at the 1974 general election. The question proposed shall be:

"Shall the Minnesota Constitution be amended to enable the law to adopt the federal definition of income or a percentage of the federal income tax as the basis for Minnesota taxation?

Yes.....
No ....."

## APPENDIX F — TEXT OF AMENDMENT REPEALING SPECIAL TAX PROVISIONS FOR RAILROADS

**A bill for an act**

**proposing an amendment to the Minnesota Constitution, repealing Article IV, Section 32(a); providing that railroads may be taxed in the same manner as other enterprises.**

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

Section 1. An amendment to the Minnesota Constitution repealing Article IV, Section 32(a), is proposed to the people. If the amendment is approved, Article IV, Section 32(a), shall be repealed.

Sec. 2. The proposed amendment shall be submitted to the voters at the general election for the year 1974. The question proposed shall be:

"Shall the Minnesota Constitution be amended to allow railroads to be taxed in the same way that other enterprises are taxed?

Yes.....
No ....."

## APPENDIX G — TEXT OF THE 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

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 than 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~~ 55 percent of all the electors voting upon the question at a general or special election or a majority of all the electors voting at ~~said~~ a general 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 separately.

Sec. 2. Whenever ~~two-thirds~~ a majority of the members ~~elected to~~ of each branch 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~~; and if a majority of all the electors voting at said election~~. If proposed by an affirmative vote of two-thirds of the members of each of the houses of the legislature, the convention proposal 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. If it shall appear, in a manner to be provided by law, that 55 percent of all the electors voting upon the question at a general or special election or a majority of all the electors voting at a general 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 by election on a date chosen by the convention not less than 60 days nor more that 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.

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.~~

Sec. 3. Alterations or amendments to the structure of the legislature may be proposed by a petition signed by a number of electors in each congressional district equal to at least eight percent of the total votes cast for candidates for governor in the district 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 24 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 55 percent of those voting on the amendment or a majority of those voting in the election.

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 provide for the submission to the people of constitutional amendments and of the question of calling a constitutional convention at special elections and 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 permit the submission of amendments to the structure of the legislature by petition of the voters?

Yes.....
No....."

MINNESOTA CONSTITUTIONAL STUDY COMMISSION

# AMENDMENT PROCESS COMMITTEE REPORT

COMMITTEE

Mrs. Betty Kane, Chairman

Senator Carl A. Jensen

Representative Ernest A. Lindstrom

Research Assistant:

Michael Glennon

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## COMMISSION CHANGES IN COMMITTEE RECOMMENDATIONS

pp.19-20, Initiative: After submitting this report, and before Commission discussion and vote, the Amendment Process Committee modified its recommendation not to allow initiative amendments. It proposed that, like Illinois, Minnesota allow initiative amendments to the legislative article. The Commission voted to allow such initiative, but confined it to matters affecting "the structure of the Legislature."

pp.20-24, Multifarious amendments: Of the "possible recommendations" of the Amendment Process Committee on multifarious amendments, the Commission voted to leave unaltered the last sentence of Section 1 of Article SIV, on the theory that judicial deference to legislative judgment would allow revision of an entire article.

pp.24-29, Majority needed to ratify amendments: The Commission decided on an alternative method of ratifying amendments: either a majority of all electors, as at present, or 55% of those voting on the proposal.

pp.31-32, Legislative submission of question of calling a constitutional convention: The Commission decided that a majority of both houses was sufficient to submit the question to the voters, rejecting both the 2/3 majority presently called for by the present Constitution and the 3/5 majority recommended by the committee.

p. 32 Vote of people on question of holding a convention: The Commission decided to apply the same majority for acceptance of a convention call as for ratification of an amendment; a majority of all electors or 55% of those voting on the proposal.

# REPORT OF THE AMENDMENT PROCESS COMMITTEE

## I. Introduction

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 overwhelming 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 as 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; about 76% passed. The average of nine per state far exceeds Minnesota's rate of amendment submission. Moreover, entire articles, packages of articles, even whole new constitutions were being adopted in many states.

## 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 convention 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 convention 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 convention. 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 conventions 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 separate packages. Illinois separated out four controversial proposals for a separate vote. Pennsylvania, which held a convention only after voters had accepted major revisions by amendment, divided the convention decisions into eight separate 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 separate 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 and general elections of 1970 and were 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 financed 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 submitted in the next election.

In subsequent years we recommend that the Legislature and voters have the benefit of background study and recommendations afforded by a similar constitutional study commission, and that the revision continue in 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 convention.

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 Article 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 legislative majority for submission limits amendments to those with greatest support but 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, temporary 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 separately 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 separately. (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 separate 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 separately 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 separate 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(less than 28%)

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 when 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 does not seem fair or sensible

that 13 amendments which have received from 75% to 85% "yes" votes should not have been 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 decides 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

The following comparison of our provisions for a convention 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 convention 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 of the above 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 phased 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 separately 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. 2.--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 _____

## BIBLIOGRAPHY

### PUBLISHED MATERIAL


Anderson, William and Lobb, A.J., A History of the Constitution of Minnesota, University of Minnesota, 1921

Graves, W. Brooke, Problems in State Constitutional Revision, Public Administration Service, Chicago, 1960

League of Women Voters of Minnesota, The State You're In, Minneapolis 1958

League of Women Voters of Minnesota, A Study of Minnesota's Amending Process, Minneapolis, 1961

Mitau, G. Theodore, "Constitutional Change by Amendment: Recommendations of the MCC in Ten Years' Perspective, Minnesota Law Review 44:461-483, 1959

Mitau, G. Theodore, "Partial Constitutional Revision Through Piecemeal and Comprehensive Amendments: Reform Patterns of the 1960's" in Contemporary Approaches to State Constitutional Revision, University of South Dakota, 1970

Model State Constitution; National Municipal League, 6th edition 1970

Report of the Constitutional Commission of Minnesota, St.Paul 1948

Sturm, Albert L., Thirty Years of Constitution Making, 1938-1968, National Municipal League, 1970

Sturm, Albert L., Trends in State Constitution Making 1966-1970, State Constitutional Studies, College of William and Mary, 1971

Book of the States, 1970-1971 Council of State Governments, 1971


### INTERNAL RESEARCH-STAFF REPORTS


Staff Memorandum on Multifarious Bills and Amendments, Mike Glennon, April 27, 1972
Staff Memorandum on SF 2013, Mike Glennon, May 25, 1972
Staff Memorandum on Issues Facing the Amendment Process Committee, Jon Schroeder, June 9, 1972
Staff Memorandum on Multifarious Amendments, Jon Schroeder, June 12, 1972


### TESTIMONY AND LETTERS TO THE COMMITTEE

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: Pertinent Facts on Amendments Submitted to the Minnesota Constitution

Under the amending majority of our original Constitution, prevailing from 1857 through the election of 1898 and requiring only a majority of those voting on the proposal, 66 amendments were submitted. Of these, 48 (73%) passed. Had the present majority of all electors been required to pass an amendment during those years, 29 of the 48 successful amendments would have failed.

Between 1900, when the more difficult amending process went into effect, and 1972, 118 amendments were submitted. Of these, 69 were rejected. Of the 69 rejected amendments, 60 would have passed under the terms of our original amending provision.

Twenty amendments which are now part of our Constitution had to be submitted and resubmitted before acceptance, thus requiring lost time for needed reforms, wasted political energy, and the expense of ballot submission. Ten amendments were submitted two times before final acceptance; five amendments three times; three amendments four times; two amendments five times.

From 1857 through 1972, 13 amendments have received more than 50% yes votes, but less than 55%. (This is 11% of submitted amendments.)

A list of the 188 amendments submitted to the Constitution has been compiled by Senate Intern Christine Bennett and can be consulted in the Judiciary Committee Office. The table gives:

the year of submission;
content of amendment;
adoption or rejection;
yes and no votes;
total vote at election;
yes vote as a percentage of total votes cast at election;
yes vote as percentage of total vote on amendment
percentage of fall-off.

MINNESOTA CONSTITUTIONAL STUDY COMMISSION

# BILL OF RIGHTS COMMITTEE REPORT

## COMMITTEE

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Michael Hatch
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## COMMISSION ACTION ON ELECTIVE FRANCHISE PROPOSALS

P. 5, Par.2 - The Commission voted not to allow those who will be 18 by the time of the general election to vote in the primary if not 18 by that time.

P. 6, Section 2, relating to loss of residency, was not accepted by the Commission.

## COMMISSION ACTION ON THE BILL OF RIGHTS PROPOSALS

P. 15 The section on Inviolability of the Body was rejected by the Commission.

P. 14-18 Because of considerable objection to the wording of the Committee's original proposals when they were initially presented to the full Commission, the Bill of Rights Committee decided to withdraw the recommended sections on the Mentally Disabled, Equality of Rights, and the Right to Know.

In general, the objections opposed singling out specific groups for inclusion in the Bill of Rights or adding what might be considered legislative matter to the Constitution.

The Committee therefore introduced a proposed equal protection and due process section to replace the withdrawn sections, the wording of which is almost identical to that of the fourteenth amendment of the U.S. Constitution:

> No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws. The Legislature shall have power to enforce, by appropriate legislation, the provisions of this section.

It was hoped that this section might be used to protect the rights enunciated in the withdrawn proposals without encountering the same objections or drafting problems. The Commission adopted the equal protection and due process section unanimously, together with

two resolutions prepared by the Committee in the interests of furthering the objectives outlined in its report:

> The Legislature should 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 ill or mentally retarded, and provide protection for all persons regardless of race, religion, sex, national or social origin, physical handicap, or mental illness or mental retardation.
>
> The Legislature should implement the above section by providing legislation designed to protect the individual's right of access to information collected and preserved relative to him.

P. 20 Although the Committee believed that the sections on treason and lands declared allodial were obsolete, some questions were raised by the Revisor of Statutes office just before the Commission hearing. Since there was not time to consider the ramifications of these comments, the Committee withdrew its recommendation for the deletion of these sections.

# 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 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 Tennessee's durational residency requirements of one year in the state and three months in the county were unconstitutional but clearly approved a 30-day period (equivalent to Tennessee's waiting period between the use of registration and the election). The Minnesota constitutional requirement of six

months was invalidated by the decision in Keppell v. Donovan affirmed by the Supreme Court. 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 pro's and con's 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 holding 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 the State except as provided by law.

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 and to protect these rights 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.

* W. 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 Welfare 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 accommodations, 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 defer of home, person, property, or the state shall not be abridged. N 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 as part of 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 record of testimony submitted to the

Commission files. 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 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.

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 Stephenson, 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, Inc.
John DuRand, Executive Director of Occupational Training Center, Inc.
Jack Baker, President of the Minnesota Student Association
Dennis Hilger, Minneapolis
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 I. 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 Citizens Concerned 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
Upper Midwest American 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 Commission
Rep. John Johnson

MINNESOTA CONSTITUTIONAL STUDY COMMISSION

# EXECUTIVE BRANCH COMMITTEE REPORT

## COMMITTEE

Senator Carl A. Jensen, Chairman

Senator Kenneth Wolfe

Hon. Karl F. Rolvaag

Research Assistant:

Stanley Ulrich

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The Commission made the following alterations in the recommendations of the Executive Branch Committee:

P.11 The Commission voted not to delete the elective attorney general from the Constitution.

P.20 The Commission voted not to delete the elective state treasurer from the Constitution.

P.21 The Commission voted to have the pardon board in the Constitution, be composed of members appointed by the governor and confirmed by the Senate.

P.29 The Commission did not consider the recommendation for deletion of Article XIII, Sec.4 providing that the lieutenant governor not participate in the impeachment trial of the governor.

# 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 Executive Branch Committee was also assigned the duty of reviewing constitutional provisions dealing with impeachment of officers found in Article XIII.

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, done between ;950 and 1968. These studies are listed in the Bibliography and referred to specifically throughout this report.

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 1857. 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, 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 to 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 ($9,600 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 of 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 designating the lieutenant governor as the governor's "chief of staff" or giving him duties of liaison with local governments. The trend 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 prec dents 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 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 retention of a constitutional-elective attorney general. The Minnesota Efficiency in Government (Little Hoover) Commission of 1950 recommended retention of the attorney general and an appointed official heading a Department of Law. The Minnesota Self-Survey of 1955-58 recommended retention 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 departments of state government via the deputy and assistant attorneys genera. 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 certifies the authenticity of all official records, documents, proclamations, and executive orders of the governor and the acts of the legislature. He 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. Three states have a constitutional secretary of state elected by the legislature. Nine have 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.

The responsibilities of the secretary of state are primarily of an administrative, not a policy-making 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 these responsibilities are.

The committee is confident that the present responsibilities of the office of secretary of state 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, a qualification 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 Department of Administration, to be incorporated with the budget and central accounting functions already being performed 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 accountants and that the Legislature make the appointment from a list of eligible CPA's submitted by the Minnesota Society of Certified Public Accountants.

5) The appointment of both the auditor and public examiner for a term of six to ten years, 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 authority 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 rivals 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.

## 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 Article XIII, Section 1; 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 the other portion of the bill. In such case he shall append to the bill, at the time of signing 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

### Published Material


Report of the Constitutional Commission of Minnesota, St. Paul, 1948.

How to Achieve Greater Efficiency and Economy in Minnesota's Government, Minnesota Efficiency in Government Commission, (Little Hoover Commission), 1950.

Reports of the Functional Task Forces and Summary Revision, Minnesota Self-Survey, 1955-56.

Reports of the Operational Task Forces and Summary Evaluation, Minnesota Self-Survey, 1955-58.

A Summary of Earlier Comprehensive Survey Proposals for Executive Reorganization, State of Minnesota, Public Administration Service, Chicago, 1968.

Modernizing State Executive Organization, Government of Minnesota, Public Administration Service, Chicago, 1968.

Report of the Governor's Council on Executive Reorganization, 1968.

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
Congressman Bill Frenzel
Secretary of State Arlen I. Erdahl
Governor Wendell R. Anderson
STate Treasurer Val Bjornson
Kenneth A. Mitchell, Minneapolis
Thorwald H. Anderson, U.S.Attorney's Office, Minneapolis
Lawrence A. Wallin, Department of Political Science, Hibbing
Rudolph Hanson, Albert Lea, Attorney
Rev. Alton Motter, Minnesota Council of Churches
Stanley G. Peskar, League of Minnesota Municipalities
District Judge Lindsay G. Arthur

MINNESOTA CONSTITUTIONAL STUDY COMMISSION

# EDUCATION COMMITTEE
# COMMITTEE REPORT

## COMMITTEE

Representative O. J. Heinitz

Mr. Orville Evenson

Mr. Duane Scribner

Research Assistants:

Professor Fred Morrison
Jon Hammarberg
Joseph Hudson

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The Commission adopted all of the Committee's recommendations contained in this report.

# REPORT OF THE EDUCATION COMMITTEE

## CHAPTER I

## INTRODUCTION

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, Sec. 16.

The committee initiated its study by contacting the 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:

(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

(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 framework 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.

In addition, 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 regarding Article VIII, Secs. 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, 1972, 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, Sec. 2, deals with this question. Article I, Sec. 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 in the amount of tuition payments to the parents of children in such schools.

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, Sec. 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 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.

The other provision is the second paragraph of Article VIII, Sec. 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 or 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, Sec. 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, Sec. 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 language the Minnesota Constitution contains, government in Minnesota may not violate the provisions 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 have 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 benefited 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 unconstitutionality. [4]

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.

To sustain Minnesota's public transportation for parochial students, the Minnesota court seemingly relied on the traditional basis that the law provided a benefit to the child, not the parochial school; however, 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 Minnesota 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, 1972, 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 by the courts to 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"; another suggests as a criterion 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 of 1963 (20 U.S.C. § 701-58) which permitted 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 decisions. 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, buses, books, from "software," personnel and more intimate involvement in parochial education. Whatever the federal standard, it will provide a minimum protection for the separation of church and state in Minnesota.

Other State Constitutions

Many other state constitutions contain provisions 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 Constitution: "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 are 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, 1972. 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 improvement 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 general acceptance 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 of 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 confronted 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 division 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 to the voters of the state, we believe that all of the evils of sectarian division on political issues would exist. Given the difficulty of amendment to the state Constitution, this division would undoubtedly insure defeat.

Apart from these practical considerations, we believe that the Constitution should remain unaltered. Clearly an

unnecessary entanglement between state and church must be avoided. This is not simply a matter of good policy, but a dictate of the United States Constitution. 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 it should be retained.

Accordingly, this committee recommends no change in the constitutional provisions prohibiting aid to sectarian education.

## III. EQUALIZATION OF SCHOOL FINANCES

### 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, Sec. 1, and Article VIII, Sec. 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. 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.

These constitutional provisions authorize the Legislature to establish a system of public schools. The Minnesota Supreme Court has held that the language of Section 2 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.

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 Laws 1971, Ex. Sess., 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 arguments for increasing the role of state government in school financing are based upon the distribution of assessed

valuations, upon a claimed statewide 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 exacerbated in the metropolitan areas where commercial and industrial property contributes to the local tax base but places no burden on the local schools, while the employees who work in those plants may well live in another district, sending their children to schools to which they contribute only a residential tax. The consequence is that "poor" districts, those with a lower valuation per pupil, have greater difficulty in providing equal educational opportunity for their 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 dependence on local assessments provides 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 equal educational opporunity. Since the court viewed education as a "fundamental interest" and the distinction on geographic and wealth bases was "constitutionally suspect," the court invalidated the California 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 statewide financing is required by the United States Constitution, no question remains for us to consider. In such a case the

Legislature will have a mandate to act in only one way. If the courts hold that statewide financing is permissible, but not required 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 statewide financing. This issue is also currently before the Federal District Court in St. Paul, in conjunction with a challenge based upon the United States Constitution. The state 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. Challengers claim that this language requires a system of statewide financing for education, in order to insure the uniformity which the Constitution calls for.

Again the committee is not in a position to adjudge those 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 the language of Article VIII, Secs. 1 and 2, requires statewide 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 one locality throughout their lifetime. Responsibilities for education should be allocated to those larger areas which will provide them homes througout 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.

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 level not to exceed 10 percent of the state allocation.
>
> The Commission further recommends that state budgetary and allocation criteria include differentials 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 statewide 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.

Both proponents and opponents of change appear to agree that there is merit in the present constitutional language. It permits 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 the sections on school financing. 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, providing 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. This is an area in which flexibility has been an advantage in allowing the Legislature to adapt educational programs to the changing circumstances.

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 provide otherwise would create a financially rigid, lock-step, statewide 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 statewide financing was the wise alternative.

The committee, of course, takes no position on the issues currently being litigated. If the courts hold that statewide 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.

# 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 separately. 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 and Statutory Provisions

There is no language in the Constitution dealing with higher education in general. Article VIII, Sec. 3, 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

separate boards of trustees. Area vocational-technical schools are governed by the State Board of Education and the local school boards.

The Legislature has also created a Higher Education 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 thus a statutory body, not established in the Constitution.

Nature of the problem

Two interrelated problems arise. 1. Should the system of higher education in Minnesota be a unitary one with responsibility centered in a single governing body or should there be separate governing bodies for different kinds of institutions? 2. Should the Constitution spell out the organization of higher education in the state?

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.

1. 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 fairer allocation of resources between the several institutions of higher learning.

The Committee requested testimony on this issue at its May 4 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 by a separate governing board.

The Committee agrees that each of the systems of higher education has a separate educational mission. While there is some overlapping of purpose and a clear need for coordination, we believe these different purposes are best served by separate administration.

If there were only one governing body to oversee all public institutions of higher learning within the state, that body might lose 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 in the various sub systems and on various campuses. This would create another level of bureaucracy in the educational system, and the governing board would be further removed from problems of the institutions. The new level of administration necessary to serve the unitary state board and implement its decisions would, we believe, 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 (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 those of the private 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 responsibility 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 disagree with the recommendations of the Coordinating Commission, they remain free to act, but they face 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 also 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. 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 but should not have the power to veto or cut a proposed budget. It should only have the power to review a budget with respect to the total educational expenditures of the State and the needs of other institutions. If the governing body of that institution declines to endorse a proposed request, it should be free to go to the Legislature with its original request; it would, however, face a certain burden of justifying its insistence upon that amount.

This 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 persuasion mentioned above. The proposal would only spell 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 recommends that the Legislature amend Chapter 136A of the Minnesota Statutes to provide the kind of financial review we have suggested above.

2. 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 proference for a constitutional status for his institution, he agreed that the statutory provision had served well.

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 is of the opinion that there is no need for constitutional change spelling out the organization of higher education.

## B. THE UNIVERSITY OF MINNESOTA

### Constitutional language

Article VIII, Sec. 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 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.

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 and against change

This autonomy of the University has been the primary focus of critics of the present Constitution. Representative Ernest Lindstrom appeared at our May 4 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.

Committee investigation has indicated that the Legislature exerts substantial authority over the University. Through the wise exercise of this authority, the Legislature can guide the University in making braod policy decisions, while abstaining from matters of detail, which are more properly left to the governing body of that institution.

Legislative control can be exercised through the appropriation process. The Legislature has repeatedly placed "riders" on appropriation 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 legislators make known their collective opinion about certain matters, the University becomes aware of potential adverse financial consequences.

As discussed above, we recommend that the University, along with other institutions of higher education, be required to submit financial requests to the Higher Education Commission for review and recommendation. The Legislature will thus have information and impartial recommendations which will strengthen its wise control over the financial affairs of the University.

Clearly 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 legislative influence on such matters. On questions of administration, however, the Regents retain autonomy. The Committee believes that this balance between legislative authority and administrative responsibility is desirable for any state institution. The present constitutional provision protects this balance for the University.

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, Sec. 3, be retained in its present form.

The Committee is aware that in recommending retention of the University's constitutional status, but not recommending the addition of constitutional provisions for other state institutions of higher learning, the University is being treated differently from the other State systems. 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.

## V. OTHER ISSUES

The Committee also briefly discussed two other issues in the course of its deliberations. We deal with these in summary fasion.

### 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, the constitution of the State Board of Education, the provisions for selection and term for the Commissioner of Education, and other details are 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. 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.

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.

B. PERMANENT SCHOOL FUND AND PERMANENT UNIVERSITY FUND

At the March 17 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 4 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. 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 Natural Resources Committee. Accordingly we take no position on them.

## 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 retention of the present language of Article I, Sec. 16, and Article VIII, Sec. 2, par. 2, relating to aid to sectarian education.

We recommend no change in the language relating to financing of education, believeing that the present language of Article VIII, Secs. 1 and 2, grants 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 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 function 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.

## 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, Sec. 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 of 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, Sec. 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 Sauk Centre 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. Va. 1969), aff'd mem. 397 U.S. 44 (1970); McInnis v. Shapiro, 293 F. Supp. 327 (N.D., 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. 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).

# APPENDIX

## RESEARCH PAPERS PREPARED FOR THE COMMITTEE

Jon Hammarberg, "Trends in Financing Public Schools" February 15, 1972

Joseph Hudson, "State Aid to Sectarian Education", May 15, 1972

## WITNESSES PRESENTING EVIDENCE TO THE COMMITTEE

### Meeting of March 17, 1972 -- St. Paul

Robert E. Blixt, Executive Secretary, State Investment Board
Mrs. Joseph Brink, St. Joseph, Minnesota
C.B. Buckman, Deputy Commission, 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 Schulz, Minnesota Real Estate Taxpayers Association

### Meeting of May 4, 1972 -- 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, State College System
Malcolm Moos, President, University of Minnesota

### Meeting of June 5, 1972 -- 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 Schulz, State Representative
W.A. Wettergren, Minnesota School Boards Association
Henry Winkels, Minnesota Federation of Teachers

OTHERS WHO SUBMITTED LETTERS

Robert F. Arnold, Executive Secretary, Minnesota Association of Elementary School Principals

LeRoy Brown, Director, Education Department, Minnesota Catholic Conference

Edgar M. Carlson, Executive Director, Minnesota Private College Council

Gerald W. Christensen, Director of State Planning Agency

Jerry W. Deal, President, Minnesota Real Estate Taxpayers Association

A. L. Gallop, Executive Secretary, Minnesota Education Association

Thomas H. Hodgson, Executive Director, Citizens for Educational Freedom

Dr. John S. Hoyt, Jr., Chairman, Edina Board of Education

Reymond E. Maag, Assistant to the President, Minnesota South District of the Lutheran Church, Missouri Synod

John F. Markert, Executive Director, Minnesota Catholic Conference

David E. Mikkelson, Assistant Hennepin County Attorney

W. A. Wettergren, Executive Secretary, Minnesota School Boards Association

## ORGANIZATIONS AND INDIVIDUALS ON COMMITTEE MAILING LIST

Association of Secondary School Principals, David Meade
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 Education 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 Quillin
Minnesota State Junior 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
Representative Verne Long
Mr. Van Mueller
Senator Paul Overgaard
Representative Harvey Sathre
Mr. Roy Schulz
Mr. John Yngve

MINNESOTA CONSTITUTIONAL STUDY COMMISSION

# FINANCE
# COMMITTEE REPORT

COMMITTEE

Representative Richard Fitzsimons, Chairman

Senator Jack Davies

Senator Robert J. Tennessen

Representative Ernest A. Lindstrom

Mr. Duane C. Scribner

Research Assistant:

Steven Hedges

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All recommendations of the Finance Committee were accepted by the Commission with one minor exception. The 90-day limit on suits to test the validity of state bonds (see pp. 9 and 16) was changed by the Commission to 120 days (see Article IX, Sec. 10, subd. 1).

## 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.

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 ruled that the Legislature could not prospectively adopt future amendments and interpretations of the federal tax law from p.3.

Therefore, 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 be 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. They also may have been imposed to prevent the kind of log-rolling which the draftsmen of our Constitution had observed in other states, granting some communities large 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 (from p.15) The litigation is frequently necessary before the bonds are saleable and the expenditure permissible causes needless delay. 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, and making the three-fifths vote 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 major recommendations require a number of other minor amendments to Article IX:

| 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. | Repealed, incorporated in Sec.6, subd. 2. |
| 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. | Repealed, incorporated into Art.IX,Sec.6,subd.2(a). |
| Art.XVII, Forest fires. | Repealed, incorporated into Art.IX,Sec.6, subd.2(g). |
| Art.XIX, Sec.2, Bonds for airports. | Repealed, incorporated in 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 necessary to provide "matching" state funds to obtain federal grants for certain purposes, the delay of litigation may well eliminate the possibility of obtaining the 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 in classification in taxation is raised by Article IX, Sec.1. Is this uniformity provision adequate to meet modern needs? Should 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 _____"

MINNESOTA CONSTITUTIONAL STUDY COMMISSION

# JUDICIAL BRANCH
# COMMITTEE REPORT

## COMMITTEE

Professor Joyce A. Hughes, Chairman

Justice James C. Otis

Honorable Karl F. Rolvaag

Senator Stanley N. Thorup

Research Assistants:

Stan Ulrich
Jim Morrison

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The full Commission took action which differed from the recommendations of the Judicial Branch Committee in the following areas:

A unified court system, (Section 1 of the recommended constitutional amendment). The Commission decided that the present division of trial courts into a district court and lower courts should be retained at least until completion of national studies now being conducted on court unification.

An intermediate court of appeals (Sections 1 and 3 of the recommended amendment). The Commission preferred to give the Legislature the power to create an intermediate appellate court rather than to establish the court by constitutional mandate.

Judicial nominating commission (Section 7 of the recommended amendment). The Commission preferred to leave the power of judicial appointment exclusively in the hands of the governor, as at present.

The Commission added to the Committee's recommendation a provision that the governor may fill judicial vacancies created by incumbents not filing for reelection.

# 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 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 provided 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 all material printed in *script language*. These script sections comprise the entire text of suggested new Article VI.

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 may 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 expenditures 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 VI Sections 2 and 3 (prior to the 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 efficiency 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 that they may be disqualified to consider 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 could 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; four 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 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 judges of 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 _____"

MINNESOTA CONSTITUTIONAL STUDY COMMISSION

# LEGISLATIVE BRANCH
# COMMITTEE REPORT

COMMITTEE

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# PART ONE

# PROBLEMS OF REAPPORTIONMENT

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The following modifications in the Reapportionment Section of the Report of the Legislative Branch Committee were made by the Constitutional Study Commission:

The word "districting" was substituted for the phrase "apportionment and districting" throughout.

P.22 For proposed amendment of Article IV, Sec.2 the following was substituted:

> Number of members. Section 2. The number of members who compose the Senate and the House of Representatives respectively shall be prescribed by law.

P.23 For proposed amendment of Article IV, Sec.23 the following was substituted:

> Census enumeration 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 districting. (b)(1). The entire State shall be divided into as many separate congressional, senatorial, and representative election 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.
>
> (2) Congressional, senatorial and representative districts shall be composed of compact and contiguous territory and be as nearly equal in population as is practicable.
>
> (3) Unless absolutely necessary to meet the other standards set forth in this section, no county, city, town township, or ward shall be divided in forming either a congressional, senatorial or representative district.

P.25 For proposed amendment of Article IV, Sec.24, paragraph 1, the following was substituted:

Procedure for periodic districting. 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 wherever districting is required by court order or because the number of members who compose the Senate or House has been altered by law, the Districting Commission created under this section shall prescribe anew the bounds of the congressional, senatorial and representative districts in the State.

P.27 For proposed amendment of Article IV, Sec.24, third paragraph, the following was substituted:

> 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.

P.28 For proposed amendment of Article IV, Sec.24, subd.2, first full paragraph, the following was substituted:

> 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.

P.27 The "State executive committee" was substituted for the State central committee" wherever mentioned in Section 24.

P.28 For proposed amendment of Article IV, Sec.24, second full paragraph on P.28, the following was substituted:

> (2) In making their appointments, the State executive committees or their successor authorities, 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.

P.31 The Districting Commission was required to report within five months rather than six months.

P. 34 For proposed amendment of Article IV, Sec. 24, the last sentence before (g), the following was substituted:

> If no Commission member submits a plan by the time specificd, a majority of the entire membership of the Supreme Court shall select a panel of three state court judges, other than Supreme Court judges, to prescribe anew the bounds of congressional districts, or senatorial and representative districts, or both. The panel shall do so within four (4) months after the date for the submission of individual member plans has expired.
>
> The districting prescribed by the panel shall be subject to review by the State Supreme Court and the federal courts in the manner provided for review of a plan adopted by the Districting Commission.

P. 35 Because of some of the above changes, several dates in the timetable are changed. (See Final Report. P.18.)

# 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, Sec.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, Sec.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, Sec.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, Sec. 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 Article IV, Sec.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 ) transposed? |
| 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 (district 65), 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 twice 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 Sixty-seventh 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 to July 31 and from October 12 to 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 session's 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. Nine 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.

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, Sec. 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, and 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, Article IV, Sec.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. 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, Sec. 3 of the Main 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, Sec. 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, Sec.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, Sec.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 Treasurer.

8. OREGON

Article IV, Sec. 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, Sec.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, Sec. 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 a Non-Legislative Agency

1. ALASKA

Article VI, Sec. 3 of the Alaska Constitution empowers the Governor to reapportion the Alaska House of Representatives after each federal census. Section 8 requires him to appoint a Reapportionment Board to advise him in the performance of this task. The Board consists 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, Sec. 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 State Supreme Court. The court may substitute its plan only if it finds that the Board acted arbitrarily or abused its discretion.

3. HAWAII

Article III, Sec. 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 the president of Senate; two by the speaker of the 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 choose, by a three-fourths vote, 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, Sec. 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.

Representation of all geographic areas 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 III, Sec. 2 of the Missouri Constitution imposes the duty of reapportioning the House of Representatives after each federal census upon an Apportionment 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 each 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, Sec. 7 of the Missouri Constitution imposes the task of reapportioning 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.

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.

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.

6. MONTANA

Article V, Sec. 14 of the recently adopted Montana Constitution imposes the redistricting task upon a Commission of five citizens, none of whom may be public officials. The majority and minority leaders of the Senate and House each designate one commissioner. The four commissioners so designated then select the fifth member and he serves as chairman. If four cannot agree upon a fifth member, a majority of the Supreme Court selects him.

The Commission is directed to submit its districting plans (covering both congressional and legislative districts) to the Legislature at the first regular session after its appointment or after the federal census figures are available. Within 30 days after submission, the Legislature must return the plan to the Commission with its recommendations. Within 30 days thereafter, the Commission must file its final plan with the Secretary of State and it then becomes law.

7. NEW JERSEY

Article IV, Sec.3 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.

8. OHIO

Article XI, Sec. 11 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.

9. PENNSYLVANIA

Article II, Sec.17 of the Pennsylvania Constitution imposes lthe duty of reapportioning after each federal census upon a Legislative Reapportionment Commission consisting of five members--the majority and minority leaders of the Senate and House of Representatives and a member and chairman selected by these 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 Sixty-Seventh 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 person selected by the State Chairman of the Democratic-Farmer-Labor Party and one person selected by the State Chairman of the 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 of the 1972 Commission's Legislative Committee

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, Sec.1

Composition of legislature; length of terms and length of session. Sec. 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 Legisature may be called as otherwise provided by this Constitution.

Comment. The recommended changes in Article IV, Sec. 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 H use, will reflect any shifts of population in the state as rapidly as is practicable

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) legislative 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, Sec.2

> Number of Members. Sec.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 nineteenth among the states in population and fourteenth in land area, presently has the largest Senate in the nation and the tenth largest House of Representatives. Compared with the other ten states that have populations of between 2.5 million and 4 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 Legislature attained its present inordinate size. The Apportionment Act of 1860 was the only one in the history of Minnesota that did not increase 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, Sec.23

Census Enumeration, apportionment and districting. Sec.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). Congressional, 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 precisely, 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 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 representatinn 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 affects 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 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) members. 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 power of great moment 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 constitution 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 next page contains the timetable which our recommendations impose upon all participants in the reapportionment and redistricing 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 | ? |

## 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.

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 1970's 20 (Polsby ed., 1971).

# PART TWO

# OTHER RECOMMENDATIONS ON THE

# LEGISLATIVE BRANCH

TABLE OF CONTENTS

The following modifications in Part Two of the Report of the Legislative Branch Committees were made by the Constitutional Study Commission.

P.5 After passage of the 1972 constitutional amendment on flexible legislative sessions, the Commission voted that further consideration of length and frequency of session should await experience under the new constitutional provisions.

P.9 The Commission voted that legislative size should be determined by the Legislature and limits not be prescribed in the Constitution.

P.11 The matter of the constitutional initiative was discussed at a later date than this report, during final presentation of the Amendment Process Committee's Report. The Commission decided that citizen initiative should apply, but be limited to matters affecting the structure of the Legislature.

P.16 The Commission took no action on the residency requirements for legislators.

## I. INTRODUCTION

On July 20, 1972 the Legislative Branch Committee submitted a report to the Commission proposing revisions in the constitutional provisions regarding periodic reapportionment and redistricting.

Because of the limited time and resources available to us, we have been unable to study all other aspects of Article IV with the depth necessary to enable us to make definitive recommendations with respect to them. This Report has been prepared by the Chairman of our Committee in the hope that it may be helpful to the members of the Legislature, the Governor and the people of the State. It outlines and briefly discusses certain constitutional issues raised by Article IV other than those involving reapportionment and redistricting. It makes certain recommendations but will also indicate the matters in the Report with which one or more members of our Committee are in disagreement.

We should like to thank Mr. Mike Glennon, a student at the University of Minnesota Law School for his general research assistance and Mr. Arthur Reynolds, a graduate student in political science at the University of Minnesota and Ms. Helen Marsh, a student at Hamline University, for their informative papers on unicameralism. We have also benefited greatly from the study of the 50 American legislatures by the Citizens Conference on State Legislatures.[1]

## II. OVERALL EVALUATION OF MINNESOTA LEGISLATURE

The Legislative Evaluation Study of the Citizens Conference ranked the 50 state legislatures according to their ability (A) to function effectively, (B) to account to the public for their actions, (C) to gather and use information, (D) to avoid undue outside influence, and (E) to represent the people.[2] The Evaluation Study concerned itself with legislative structure (committee structure, length and frequency of sessions, leadership, compensation, staffing, rules and procedures, ethics) "apart from state and local politics and apart from the legislation actually produced."[3]

Overall, Minnesota's legislature was ranked tenth in the nation in mid-1970; only the legislatures of California, New York, Illinois, Florida, Wisconsin, Iowa, Hawaii, Michigan and Nebraska were ranked ahead of it.[4] Minnesota was ranked 27th in being functional, 7th in being accountable, 13th in being informed, 23rd in being independent and 12th in being representative.[5] The Citizens Conference concluded that the Minnesota Legislature's "outstanding feature is the general openness and accessibility of its processes and activities;" some of its weaknesses were due to constitutional session limitations, low salaries and limited supporting services for members (staff, information resources, etc.)[6]

The Executive Director and staff of the Citizens Conference made the following recommendations to improve the Minnesota Legislature:[7]

1. reduce the overall size of the Legislature so that the combined number of members of both Houses is somewhere between 100 and 150.

2. reduce the number of committees from 28 in the House of Representatives and 18 in the Senate to from 10 to 15 committees in each house and give parallel jurisdiction to one House and one Senate committee.

3. reduce the number of committee assignments so that each member of the House of Representatives is assigned to no more than three committees and each Senator to no more than four.

4. remove constitutional restrictions on session and interim time.

5. amend the constitution to provide a presession organizing session following a general election to elect leaders, appoint committee chairmen, assign members to committees, refer prefiled bills to committee, hold committee organizational meetings and conduct orientation conferences for new as well as returning members of the legislature.

6. have the legislature hold an orientation conference for new legislators, preferably after each general election.

7. increase legislative compensation; current salaries of $4,800 per year should be doubled immediately and increased again within the next few years as other improvements in the Legislature are made.

8. strengthen minority party role by (a) providing minority representation on the committee on rules approximating the minority proportion of the membership of the given house; and (b) empowering the minority leader in the Senate, in consultation with the minority caucus, to assign minority party members to Senate committees. (This is now done in the House of Representatives.)

9. require committees to issue reports describing and explaining their action on bills recommended for passage at the time the bill moves from the committee to the floor.

10. all standing committees should automatically become interim committees when the Legislature is not in session. (Presently 21 of the 28 House standing committees have interim status; Senate committees must request interim status.)

11. provide staff assistance to leaders of both the majority and minority caucuses, including a secretary and an administrative assistant at the professional level, with space to work reasonably adjacent to the offices of members and leaders.

12. provide rank-and-file members (majority and minority caucuses on an equal basis) with individual staff assistance consisting of a minimum of an administrative assistant at the professional level and a secretary. Such staff support should also be furnished each legislator in an office in his district.

13. reimburse legislators for travel expenses they incur while carrying out their legislative duties.

14. provide private, individual offices for every legislator, with nearby space for his assistants. The quality and amount of office space should not differ substantially between majority and minority party members.

15. establish an office in Washington, D.C. to represent the Legislature and be its most direct liaison with Congress.

Of these 15 recommendations, only two (recommendations 4 and 5) would require constitutional amendment before they could be effectuated.

We shall first discuss these recommendations and then the others which, if thought desirable, could be put into effect by the Legislature under the powers it now possesses.

Senator Robert Brown, however, is "not impressed by the extensive reference (in this report) to the Citizens Conference on State Legislatures." He writes: "While some people may think that Minnesota finished fairly high in their survey I believe that the survey was done by people with obvious biases, the survey was not well done, and the researchers did not even have all the data they said they needed (at least in the Minnesota State Senate) when they issued their final report."

Mrs. Diana Murphy, too, thinks the Report should not be linked so closely with the recommendations of the Citizens Conference.

## III. LENGTH AND FREQUENCY OF LEGISLATIVE SESSIONS

Article IV, section 1 authorizes the Legislature to meet in regular session only in each odd numbered year and then only for a term not exceeding 120 legislative days. The Supreme Court of Minnesota has held that a regular session is limited to 120 calendar days, exclusive of Sundays, from the date when the Legislature convenes.[8] The Court rejected the contention that "legislative day" means any day on which the Legislature actually meets. Instead, it ruled, a legislative day "is any day on which the Legislature may meet, which includes each calendar day from the day of convening, excluding only Sundays."[9]

The 1971 Legislature passed an act[10] proposing an amendment to this section which will be submitted to the voters at the 1972

general election. According to this proposal, the Legislature would meet in regular session in each biennium at the times prescribed by law for not exceeding a total of 120 legislative days. The "legislative day" would also be defined by law. The Legislature would not be permitted to meet in regular session, or any adjournment thereof, after the first Monday following the third Saturday in May of any year.

We agree with the 1971 Legislature that the existing constitutional restrictions on the frequency and length of legislative sessions are highly undesirable. The constitution should not prohibit a Legislature from meeting whenever the business at hand requires it, nor should it compel the Legislature to adjourn until that business is completed in an orderly and deliberative manner.

The Constitutional amendment proposed by the 1971 Legislature represents, as the Citizens Conference described a similar proposal, a "modest but significant improvement" [11] over the existing Constitutional provisions. If it passes, the experience of the 1973 Legislature will help to determine whether this improvement is all that is necessary. The Citizens Conference, it should be noted, did not envisage that the proposal it made for "modest but significant improvement" would prohibit the Legislature from meeting after the first Monday following the third Saturday in May of any year.

We recognize that the question whether the Legislature should be authorized to meet in continuous session is related to the questions of the legislature's size, the compensation to

be paid legislators, and the staff facilities to be furnished them. We shall now turn to some of these questions.

## IV. LEGISLATIVE COMPENSATION

Article IV, Section 7 authorizes the Legislature to fix the compensation of Senators and Representatives. Minnesota Statutes 1971, section 3.10 fixes the compensation of each Representative at $9,600 for his entire two-year term and that of each Senator at $19,200 for his entire four-year term. To accompany its proposed amendment dealing with the length and frequency of legislative sessions, the 1971 Legislature increased this compensation to $16,800 in the case of a Representative and $33,600 in the case of a Senator. Thus the legislative compensation would be increased from $4,600 to $8,400 per year. The increases are to become effective January 2, 1973 but only if the voters approve the proposed amendment prior to that time.

In our opinion, even $8,400 a year does not reflect the heavy demands made by citizens and the legislative process upon the legislator's time. Nor does it reflect the importance of the legislator's job. The low salaries paid legislators preclude from running for legislative office those citizens who are not well-to-do and are not in occupations which they can carry on simultaneously with their legislative tasks. We are disturbed by the relatively large number of legislators who have refused to run for re-election in 1972. We think the financial sacrifice involved in serving in our Legislature had something to do with these decisions, as did the fact that the low salaries are thought to reflect the regard

with which the people of our State hold our legislators. We think legislative compensation should be high enough to make it possible for citizens of different occupations, races, sexes and economic circumstances to consider running for the Legislature. This is the real meaning of a "citizen legislature." Adequate salaries will thus help to make the Legislature more representative. At the same time, it will help to minimize potential conflicts of interest between the public and private careers of legislators.

As indicated above, the Citizens Conference recommended that legislative salaries in Minnesota should be doubled immediately to $9,600 per year and "increased again within the next few years as other improvements in the Legislature are made."[12] We do not have a precise figure to recommend. But is is clear to us that legislators are most reluctant to raise their own salaries to adequate levels. Such action invites a campaign issue incumbents are anxious to avoid.

For this reason, we urge that the Legislature create a permanent Citizens Commission to advise it concerning the periodic adjustment of legislative compensation. Backed by the recommendations of such a Commission, the Legislature may be emboldened to bring legislative compensation to a more adequate level and maintain it there.

Senator Brown disagrees with the above discussion of legislative compensation. He writes: "This is not a constitutional issue and has no place in our Report unless we decide to make it a constitutional matter by removing the authority over legislative pay

from the Legislature--a proposal that might have some merit. While I am against including this subject in our Report, if it is to be included, I think that it should be written in a more balanced way. For example, I do not agree that raising the pay above $8,400 (or even $4,800) will necessarily broaden the base of competent legislative candidates. I feel very strongly that if salaries are too high, it attracts candidates who could not make that much money doing anything else and thus will resort to gross demagoguery in order to obtain and retain a legislative seat. There must be a balance between setting salaries so low as to discourage good people and so high as to encourage candidacies primarily because of money."

V. SIZE OF LEGISLATURE

We have considered the question of what the Constitution should say, if anything, about the size of the Legislature. At present, Article IV, section 2 authorizes the Legislature to prescribe by law the number of members who compose each House. It also imposes the obsolete limitation that the number in the Senate shall never exceed one member for every 5,000 inhabitants, which would mean a maximum number of 761 Senators according to the 1970 Census, and in the House of Representatives, one member for every 2,000 inhabitants, which would mean a maximum number of 1,902 Representatives.

As we stated in our Report proposing a new constitutional system of periodic reapportionment and redistricting, Minnesota has the largest Senate and the tenth largest House of Representatives in the nation. Ideally, as the Citizens Conference study states,

"a legislature should be large enough to represent and reflect the diverse elements of the constituency, and small enough to get things done."[13] But opinions differ as to the numbers fitting this ideal.

For Minnesota, the Citizens Conference recommended that the Senate and House of Representatives together should have a combined membership of 100 to 150.[14] Under the reapportionment and redistricting plan recently devised by the three-judge federal district court and set aside by the U.S.Supreme Court, the combined membership would have been 140—a House of 105 members and a Senate of 35 members. This plan received popular support in many sections of the State and in the ranks of both political parties.

We have been able to agree only to the proposition that for the foreseeable future, the Legislature should not become larger than it is now. This is one of the recommendations we have made in connection with our proposals for periodic reapportionment and redistricting. There is support in our Committee for the view that the size of the Legislature should be cut to that set forth in the plan of the federal district court (105 member House and 35 member Senate); that the present size of the Legislature should be maintained; and that the present size of the House should be maintained but the Senate's size should be cut.

Should the present constitutional provision authorizing the Legislature to fix its size be changed or retained? To retain this provision dims any chance of a reduction in size. We appreciate that the maximum size we propose in our Report on reapportionment and redistricting will probably remain the size of the

Legislature. Short of a constitutional convention, the matter of size can be taken away from the Legislature only by a constitutional amendment which would allow initiated constitutional amendments or legislation for the purpose of fixing the size of the Legislature for all purposes. It is our judgment that it would not be possible or wise to try to limit the initiative to this purpose exclusively because there are like reasons to extend the initiative for other purposes as well. We are aware, of course, that the Amendment Process Committee opposes a constitutional provision for the use of the initiative to make laws or amend the Constitution. In discussing this Committee's recommendation, the Commission should bear in mind the problem of altering the Legislature's size.

The alternative of trying to deal with the Legislature's size in the Constitution runs the danger of mistaken estimates of future population changes. The 1948 Constitutional Commission, for example, recommended a change in the Constitution to limit the number of Senators to not more than one for every 40,000 inhabitants and the number of Representatives to not more than one for every 20,000 inhabitants.[15] This would have allowed the 1973 Senate to have 95 members and the 1973 House, 190 members, sizes we all agree would be excessive.

Our Committee is not in agreement on whether the size of the Legislature should be precisely fixed in the Constitution. Speaker Dirlam is of the view that the Legislature should continue to be authorized to fix the size of the Legislature subject to the limits proposed in our recommendations for periodic reapportionment and redistricting. Professor Auerbach is inclined to the view that it

may be preferable to specify the precise number of Senators and Representatives in the Constitution, provided that the Constitution is made easier to amend. Then the size could be adjusted in the light of new population figures. But the question discussed above would still remain as to how realistic it is to expect the Legislature to propose a constitutional amendment cutting its size.

Senator Brown writes: "Personally, I favor a reduction in size of the Legislature and I favor both upper and lower size limits being written into the Constitution. I would suggest 120 and 60 as upper limits and 80 and 40 as lower limits. That way, as long as we maintain some semblance of a citizen legislature, it could be relatively large; but when a decision is made to go to a "professional" legislature, the size could be cut drastically. Also, these limits would permit a change in the House-Senate ratio from 2-1 to 3-1 if so desired. Actually, the 120-40 plan would be my choice. Limits should be written effective with the 1980 census."

Senator Brown also favors the initiative for all types of constitutional amendments, but hopes that the Commission will agree to recommend the initiative at least with respect to all of Article IV.

## VI. Other Recommendations

### A. Other Citizens Conference Recommendations

As indicated above, the other recommendations made by the Citizens Conference to improve the Minnesota Legislature can be effectuated by the Legislature itself under existing constitutional provisions. In fact, since these recommendations were made in mid-1970, the Citizens Conference reports that the Minnesota Legislature has taken some steps to improve its organization and

procedures accordingly.[16] We have already mentioned the constitutional amendments which the 1971 Legislature has proposed. In addition, the Senate conducted a pre-session orientation program before the 1971 session. The number of standing committees in the 1971 Legislature was reduced in both Houses and each member was assigned to fewer committees. Major additions have been made to the staff, including administrative assistants, Senate Counsel assistants, the employment of ten research specialists during the session and a full-time librarian in the Senate Index department. The Senate Finance Committee added a full-time legislative analyst to bring full-time strength up to three. The clerical staff in the Senate has also been increased 28 per cent. Facilities have been improved and further improvements are in process or planned.

We urge the Legislature to appoint a joint standing committee of the Houses, composed of legislators from both caucuses in equal numbers, to study the Citizens Conference recommendations and initiate the steps to implement those that are deemed desirable and have not yet been adopted. Improvement of the Legislature's effectiveness should be a continuing task of this legislative committee.

Senator Brown thinks that all of the above discussion under A has no place in the Committee's Report.

B. Party Designation

In fact, Minnesota is a State with a vigorous two-party system, which reflects itself in the Legislature as well as in national politics. There are good reasons why political party identification of candidates for the Legislature should be required

and the Legislature organized on the basis of a majority and a minority along party lines. Party designation will make for a more comprehensible, more accountable and more legitimate Legislature.

The existing Constitution is silent on this issue and party designation may be required by legislation. We think the Constitution should remain silent on this issue, but that it should be dealt with by legislation. As a practical matter, this issue, like that of the Legislature's size, will not be a constitutional issue without the initiative or a constitutional convention. A Legislature which is unwilling to make party designation a statutory requirement will probably also be unwilling to propose a constitutional amendment to make party designation a constitutional requirement.

Senator Brown thinks that all of the above discussion under Part B has no place in the Commission's report, unless the Commission decides to recommend that party designation be made a constitutional issue. He writes: "I have some sympathy with that, although it may be getting too detailed to be a constitutional issue."

C. Special Sessions

Article V, Sec.4 empowers the Governor "on extraordinary occasions" to "convene both houses of the legislature." We think the Legislature should be authorized to call itself into special session whenever, in its opinion, the State's welfare so requires. Such authority would bolster the Legislature's independence and increase its responsibility and thereby make state government more effective.

To assure that the expense of a special session is not incurred unless the matters in question are important enough to warrant it, the Legislature should be authorized to call itself into session only upon a two-thirds vote each House.

It is possible that passage of the amendment proposed by the 1971 Legislature regarding the length and frequency of legislative sessions may accomplish the same purpose as an amendment empowering the Legislature to call itself into special session. For this reason, we do not urge the latter amendment at this time, but would prefer to await the vote on the proposed amendment in the 1972 election and, if it is adopted, some experience thereunder.

Senator Brown thinks the Committee should recommend something specific on special sessions or delete the discussion under C above.

D. Presiding Officer of Senate

Article IV, Sec. 5 directs the House of Representatives to elect its presiding officer. Article V, Sec. 6 makes the Lieutenant Governor ex officio president of the Senate. The 1971 Legislature passed an act proposing to amend these sections to direct each House to elect its presiding officer and to delete the provision making the Lieutenant Governor the presiding officer of the Senate. These proposals will go to the voters in the November, 1972 election.

Because the Lieutenant Governor may not vote to break a tie,[17] his role in the Senate has become largely ceremonial. We think this role can be dispensed with and therefore favor the proposed amendment. In any case, we do not think the Lieutenant Governor's role in the Senate should be more than ceremonial because such a role

detracts from the Senate's sense of independence and responsibility. Only leaders elected by the Senators should exercise significant powers in the Senate.

E. Legislative Procedures

On the whole, the Legislature may determine its own procedures. The Citizens Conference has made a number of procedures which need re-examination:

1. Should the Constitution continue to direct, as does Article IV, Sec.10, that all bills for raising revenue shall originate in the House of Representatives? We think not: the Constitution should be amended to delete this provision. The Senate, then, would also be empowered to originate revenue bills.

2. Should the Constitution continue to authorize the "pocket veto", as does Article IV, section 11?

3. Should the Constitution continue to require, as does Article IV, section 20, that every bill be read on three different days in each separate House? We think it would suffice to require that every bill be "reported", not "read", on three different days. This would provide the protection against hasty action intended by the present requirement yet eliminate the cumbersome and time-consuming aspects of compliance with it.

F. Qualification of Legislators

Article IV, Sec.25 requires not only that legislators be qualified voters of the State but also that they reside a year in the State and six months immediately preceding the election in the district from which they are elected. The latter requirement may work unfairly in the election immediately following reapportionment

and redistricting, and the Supreme Court in Sixty Seventh Minnesota State Senate v. Beens intimated that the federal district court could waive it. We are skeptical about the current justification for these residency requirements.

G. Unicameralism

Interest in the possibility of a unicameral legislature in Minnesota heightened when the three-judge federal district court reduced the size of both houses of the Minnesota Legislature for purposes of its first reapportionment and redistricting plan. This interest has not dissipated. It parallels the growing interest in unicameralism in other states. Yet Nebraska continues to be unique among the states in having a unicameral legislature. Only recently the voters in North Dakota and Montana rejected the opportunity to have a unicameral legislature.

We are not recommending unicameralism for Minnesota. But we think this possibility should be kept open and debated in the years to come. To this end, we shall present briefly some of the major considerations militating for and against unicameralism in Minnesota.

Contemporary interest in unicameralism may be said to have been revived by the U. S. Supreme Court's decision in Reynolds v. Sims[19] requiring population to be the predominant basis of representation in both houses of a state legislature. Responding to the argument that the Court's decision rendered the concept of bicameralism "anachronistic and meaningless," Mr. Chief Justice Warren said:

> A prime reason for bicameralism, modernly considered, is to insure mature and deliberate consideration of, and to prevent precipitate action on, proposed legislative measures. Simply because the controlling criterion for apportioning representation is required to be the same in both houses does not mean that there will be no differences in the composition and complexion of the two bodies. Different constituencies can be represented in the two houses. One body could be composed of single-member districts while the other could have at least some multimember districts. The length of terms of the legislators in the separate bodies could differ. The numerical size of the two bodies could be made to differ, even significantly, and the geographical size of districts from which legislators are elected could also be made to differ. And apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house. In summary, these and other factors could be, and are presently in many states, utilized to engender differing complexions and collective attitudes in the two bodies of a state legislature, although both are apportioned substantially on a population basis.[20]

The current debate over unicameralism versus bicameralism centers, in part, on the question whether, in fact, we are engendering "differing complexions and collective attitudes in the two bodies of a state legislature" and whether such differences contribute to fair and effective democratic state government.

At the same time, it should be kept in mind that the Supreme Court's decision in Reynolds v. Sims also removed one of the principal objections traditionally raised to bicameralism, namely, that the "upper house" served to check the popular will reflected in the "lower house." Mr. Chief Justice Warren did not envisage that bicameralism would play such a role any longer.

It should also be pointed out before we launch into our discussion that one of the factors mentioned by Mr. Chief Justice Warren as possibly making for differences between the two houses would be foreclosed under the recommendations we made for periodic

reapportionment and redistricting. We recommend single-member districts in both the Senate and the House.

1. Does Bicameralism Insure Mature and Deliberate Consideration of Proposed Legislation?

An affirmative answer to this question is one of the principal justifications of bicameralism. The proponents of unicameralism argue both that deliberation does not now characterize the bicameral legislature which passes so many of its bills during the last days of the session and that a unicameral legislature need not be less deliberative.

2. Alleged Advantages of Unicameralism and Their Assessment

The proponents of unicameralism also contend that a unicameral legislature would be superior in the following respects:

a. It would not require legislative work to be done twice.

b. It is more accountable to the people, that is, it is easier to understand because simpler in structure. There are no problems of overcoming the rivalry and friction between the two houses and coordinating their work, managing joint committees or controlling conference committees. Thus the voters are better able to know what their legislators are doing and to punish or reward their performances. Indeed the Citizens Conference Evaluation Study ranked Nebraska first among the 50 states in being accountable.[21]

c. It would cost less compared to a bicameral legislature and thus make it easier to provide higher salaries and more adequate staff and facilities to legislators. The acceptance of this contention depends, of course, upon whether the number of legislators

in a unicameral legislature will be fewer than the combined number in both houses of a bicameral legislature. In Minnesota it could be safely assumed that this would be the case.

d. It would attract a better type of legislator. Since Nebraska affords the only basis of comparison, this contention is still not proven. Moreover, it is difficult to assess this claim because there is little agreement on what constitutes a "good" legislator. However, it should be mentioned that the American Political Science Association's Committee on American Legislatures accepted the view that a unicameral legislature would attract more outstanding citizens to legislative service.[22]

Even if we grant the defects of the bicameral legislature pointed out by the proponents of unicameralism--the duplication of legislative work, the added expense, the lack of sufficient accountability—the question would remain whether they are more than balanced by its advantages. It is difficult to make such an assessment without evaluating the legislative output itself and then one's stand on issues tends to affect one's views about legislative structure. It is interesting, therefore, to note that a national "Quality of Life" study conducted in 1967 by Dr. John O. Wilson ranked Minnesota 4th in the Nation and Nebraska 38th, for its "Democratic Process." In the same study, Minnesota was ranked 1st in the nation for "Health and Welfare" and "Equality"; Nebraska ranked 32nd on these categories.[23] This does not mean of course that unicameralism is responsible for Nebraska's relatively poor rankings in these categories and bicameralism for Minnesota's relatively high rankings. A unicameral legislature

in Minnesota might result in even higher rankings for Minnesota and a bicameral legislature in Nebraska, in even lower rankings for Nebraska. It means only that unicameralism should not be regarded as a panacea for all the ills that beset our states.

Even with respect to legislative structure alone, it is interesting that in spite of its unicameralism the Nebraska legislature was ranked 9th in the Citizen's Conference Legislative Evaluation Study while the bicameral Minnesota Legislature ranked 10th.[24] Nebraska ranked ahead of Minnesota only in being accountable (Minnesota ranked 7th); but Nebraska ranked 35th in being functional compared with 27th for Minnesota; 16th in being informed compared with 13th for Minnesota; 30th in being independent compared with 23rd for Minnesota and 18th in being representative compared with 12th for Minnesota.[25] Overall, nine bicameral legislatures were ranked ahead of Nebraska's legislature.

In the successful campaign for unicameralism in Nebraska in 1934, Senator George W. Norris and his co-workers agreed that unicameralism would bring about more representative government and would curb, if not destroy, the activities of lobbyists, who allegedly effected their purposes by appealing to the prejudices of the two houses and hid their schemes in the mazes of legislative procedure in the bicameral system.[26] Yet Nebraska is ranked behind Minnesota in being independent and representative. Unicameralism has not freed Nebraska from undue influence on the part of lobbyists. Indeed, it may be more difficult for lobbyists to exert improper influence in a bicameral legislature.

The Citizens Conference also recommends that the Nebraska Legislature require dual committee consideration of legislation

affecting significant sums of money--first by a substantive policy committee and then by a finance committee. Such dual committee consideration, of course, is a common characteristic of bicameral legislatures. So at least where money bills are concerned, bicameralism does seem to have the virtue of insuring their adequate legislative consideration. This is not to say that the procedures of a unicameral legislature could not be formulated so as to promote mature and deliberative legislative consideration. But a bicameral legislature can more easily assure consideration by legislators holding differing viewpoints on public policy. True, this increases the chances of legislative deadlock, but it also increases the chances of accommodation acceptable to larger numbers of people.

Since mid-1970, Nebraska, too, has improved the effectiveness of its unicameral legislature, though the shortcomings adverted to above have not been eliminated.[27] There is no way of knowing whether the improvements made by both Minnesota and Nebraska have changed the relative ranking of either in the Citizens Conference's national ranking of state legislatures. This is because the Citizens Conference report on legislative progress from mid-1970 through 1971 did not undertake to re-rank the state legislatures.[28]

3. Can The Two Houses Be Made To Represent Different Constituencies?

The answer to this question is crucial to the continued justification of bicameralism. The answer is probably yes but no one can be sanguine about the probability. Undoubtedly, the length of terms of Senators and Representatives, the numerical

sizes of the districts from which legislators are elected, will continue to differ in Minnesota. But all these factors mentioned by Mr. Chief Justice Warren, taken together, do not guarantee that the two houses will represent different constituencies. This can be done only if districts are drawn consciously so that a Senator represents more heterogeneous social, economic, ethnic and racial groups in the population than a Representative. Such a result is facilitated by the greater geographical size of the Senatorial district but is made more difficult to achieve by the constitutional requirement that a representative district may not be split in forming a senatorial district. In our Report on periodic reapportionment and redistricting, we have recommended that this requirement be retained in order to discourage gerrymandering. This is another instance in which two desirable objectives come into conflict.

If Senate districts are made more heterogeneous, the Senate will speak for less parochial interests than the House. To help assure that the legislators of at least one House will view problems from a statewide point of view is a strong argument for bicameralism. Unicameralism cannot attain this objective without sacrificing the strong representation of local and, sometimes, minority interests. Bicameralism avoids this sacrifice. But this advantage of bicameralism cannot yet be said to have been achieved in Minnesota.

4. Conclusion

Traditional acceptance of bicameralism will force the proponents of a change to unicameralism to bear the burden of proving that the change is indispensable to needed reform of the state

legislature. To date, this burden is not sustained by the evidence.

Mrs. Murphy does not think our Report should express opposition to or support of unicameralism, but should merely indicate the interest of citizens in the subject.

Speaker Dirlam does not think the Report states the case for bicameralism strongly enough.

Senator Brown writes: "Despite an overwhelming lack of public interest in unicameralism, it has been manufactured into an issue in the past two years by a few self-appointed experts on legislative reform. While there may be some merit to the study of unicameralism, I think that it has already received more attention than it deserves if we set priorities on potential constitutional change necessary for the improvement of government in Minnesota. Reynolds v. Sims did not change the method of apportioning either house of the Minnesota legislature—since statehood, both houses of our legislature were to be apportioned on the basis of population. Thus the argument that the senate was a "House of Lords" to check the popular will of the lower house never was accurate in Minnesota.

"Finally, if we are to look at unicameralism seriously as a means of making government more responsive, then also consider the parliamentary system. With a chief executive selected by the legislature and elections called immediately if the government loses a vote of confidence, the parliamentary system is most responsive. Also, unlike unicameralism in which there is only one model (Nebraska), there are numerous models of the parliamentary system at national and subnational levels in Canada and Western Europe that we could exercise."

1. Burns, The Sometime Governments: A Critical Study of the 50 American Legislatures by the Citizens Conference on State Legislatures (Bantam Books, 1971), hereinafter cited as The Sometime Governments

2. Id. at 7.

3. Ibid.

4. Id. at 49.

5. Id. at 52

6. Id. at 239

7. Id. at 239-240.

8. Knapp v. O'Brien, 288 Minn 103, 179 N.W.2d 88 (1970).

9. Id. at 106.

10. Minnesota Extra Session Laws 1971, Chapter 32, section 22.

11. The Sometime Governments, at 240

12. Ibid.

13. Id. at 66.

14. Id. at 240

15. Report of the Constitutional Commissinn of Minnesota 23 (1948).

16. The information that follows is taken from Legislatures Move to Improve Their Effectiveness: A Report on Legislative Progress from mid-1970 through 1971, 32-33 (Citizens Conference on State Legislatures Research Memorandum 15, April 1972). The information was supplied to the Conference by Aubrey W. Dirlam, Speaker of the Minnesota House and George C. Goodwin, Secretary of the Minnesota Senate.

17. See State ex rel. Palmer v. Perpich, 289 Minn. 149, 182 N.W.2d 182 (1971)

18. The Sometime Governments, at 157-160

19. 377 U.S. 533 (1964)

20. Id. at 576-577

21. The Sometime Governments, at 52.

22. American State Legislatures: Report of APSA's Committee on American Legislatures (Zeller ed. 1954).

23. The Quality of Life in Minnesota (Minnesota Department of Economic Development, 1970).

24. The Sometime Governments, at 52.

25. Idid.

26. Senning, The One-House Legislature 57 (1937).

27. Supra note 16, at 35-36

28. Id. at 4.

MINNESOTA CONSTITUTIONAL STUDY COMMISSION

# NTERGOVERNMENTAL RELATIONS AND LOCAL GOVERNMENT COMMITTEE REPORT

## COMMITTEE

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The full Constitutional Study Commission adopted all the recommendations herein made by 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 Legislature 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 separates the city and county.

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'a 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 sovereignty 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 accommodate 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 consolidated these provisions into Article XI, so that it deals 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 requires 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 prescribe 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.

## 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, Sec. 3, cities and villages have "home rule" powers if they adopt 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, Sec.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 should specifically authorize this. Thus, their powers are more strictly limited than those of 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.[1]

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 seems 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

special legislation from the local approval requirement provided in the Constitution, unless otherwise provided in the law itself. This exemption was necessary to make possible legislation which would apply to large areas, like the Twin Cities area. Although the Legislature exempted special legislation from the requirement of local approval, it has also normally provided in special acts themselves that local approval requirement 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 local 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 often 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 minor points which require specific 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 provisions 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 peculiarities, etc. It was to simplify, not to overburden 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 separate amendment.

3. Circularity of legislation; supremacy of state law. Several persons raised the hypothetical problem of "circular" amendments which the language of 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 Legislature repeal it by a special law, then the city reenact it as a charter amendment, etc.

We know of no instance 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, Sec.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, Sec. 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 board was required to submit to the chief magistrate of the district a draft of the proposed charter within six months of the board's appointment.

3) The charter was required to be approved by four-sevenths 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 thirty days in at least three newspapers within the city.

7) Amendments were required to be approved by three-fifths 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, Sec.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 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. 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.

The new article greatly increased the flexibility of the Legislature in defining the ground rules for the establishment by cities

and villages of home rule charters. Accordingly, the Legislature provided in Minnesota Statutes 1971, Secs. 410.01-410.31 for the appointment by the district court of a 7 to 15 member charter commission whose members need only the requirements of qualified voters. The majority requirement for approving and amending home rule charters was reduced from four-sevenths and three-fifths, 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, Secs. 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 langauage in Secs. 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 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.

The alterations recommended above fall into four general categories.

1) The committee recommends deletion of any reference to "freeholders" in Sec. 4. The present language provides that the Legislature "may" require that the charter commission members be freeholders (property owners.) The Legislature in Minnesota Statutes 1971, Sec.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 No. 2 below is carried out and charter commissioners become elective, then the requirement for holding the office would be those provided by Article VII, Sec. 7, that the official be a qualified voter.

There is some doubt that imposing the property 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 Sec. 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 Minnesota Statutes 1971, Sec. 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 council might itself act as charter commission.

3) The committee recommends clarification and simplification of language in Secs. 3 and 4 which grants the Legislature the authority to establish the mechanics of charter adoption, amendment, and repeal. That authority is now present but is muddled by references to possible mechanics which are not required. For example, Sec.3 provides that:

> "Home rule charter amendments may be proposed by a charter commission or by a petition of five 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 contradiction, (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 Secs. 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 complesity 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 populous metropolitan areas with their jurisdictional overkill and desperate need to interact regardless of geographical boundaries, such cooperation is now being planned and undertaken in an unprecedented 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 also of encouraging 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 one municipality to contract with another for services. 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, materials 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 Minnesota Statutes 1971, Sec.471.59, the committee recommends that any rewriting 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 re riting, 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:

> Sec.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:

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 therefore undesirable. 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 constitutional modification on this score.

Article XI, Sec.1, gives the Legislature broad authority to determine the structure of local government. The section provides:

> Local government, legislation affecting. Sec.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 problems 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

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 voluntary dissolution. This problem does not require constitutional attention.

Counties

The only explicit reference to counties is contained in Article XI, Sec.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 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, Sec.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 overridden 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, Sec.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 Commissions

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 fashioned to meet the particular needs of the Twin Cities area, show the flexibility and adaptability of the present constitutional language.

The Metropolitan Council 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. Those 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, Sec.1 applies to all units of government and has a specific provision for municipalities. Sec.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,Sec.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 Sec.1, however, the Finance Committee may be able to resolve this problem.

Secs. 5,6, and 10 of Article IX may, in some cases, restrict the ability of the State to insure municipal indebtedness. Sec.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.

Sec.6, subd.2, does not authorize the incurring of state indebtedness for municipal purposes. Sec.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 obligation 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.

Municipal and county governments are also beneficiaries of 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. The Committee recommends no change.

Mr. Kennedy also pointed out other language in the Constitution which has become obsolete or may cause confusion. Article IX, Sec.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, Sec.7, and Article XI,Sec.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. (See Appendix A for text) 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 Minnesota Statutes 1971, Sec. 645.023 to restore the requirement of local approval on special laws which affect only a few municipalities.

The Legislature already has sufficient power to authorize county home rule.

We recommend simplification and consolidation of Secs. 3 and 4 of Article XI. (See Appendix A for text.) 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 adptation of local government in the future, we make no recommendation for change in that respect.

## APPENDIX A

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 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. The new Article XI, Section 4 will reas 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 _____

## APPENDIX B

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.

NOTES

1. Minn. Laws, 1913, Chap.254.

2. State ex rel. Town of Lowell v. City of Crookston, 252 Minn. 526, 91 N.W. 2d 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

# BIBLIOGRAPHY

## PUBLISHED MATERIAL


Model State Constitution, National Municipal League, 6th Edition Revised, 1970

Report of the Constitutional Commission of Minnesota, St. Paul, 1948

"Home Rule and Special Legislation in Minnesota," Minnesota Law Review, 47:621

"Current Legislation in Minnesota, 1943," Minnesota Law Review 31:35

"Metropolitan Government: Minnesota'a 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


## RESEARCH REPORTS PREPARED FOR THE COMMITTEE


"Local Government and the Minnesota Constitution," Michael Hatch, February 29, 1972

"Local Government Organization," Michael Hatch, May 3, 1972

"County Consolidation," Michael Hatch, June 30, 1972


## TESTIMONY TO THE COMMITTEE

### Moorhead Hearing, May 4, 1972

David J. Kennedy, Assistant Senate Counsel

Everett Lecy, Moorhead City Clerk

Lloyd Sunde, Moorhead

Virgil H. Tonsfeldt, Clay County Commissioner

Thornley Wells, Clay County Commissioner

Arthur Whitney, Minneapolis Attorney

### St. Paul Hearing, May 13, 1972

Louis Claeson, Counsel, League of Minnesota Municipalities.

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

Rochester Hearing, June 13, 1972

Minnie Elman, Minneapolis

John Elwell, Minnesota City Management Association

David Gilderuse, Minnesota Township Officers Association

Gerald Hegstrom, Metropolitan Council

Dorothy Jackson, Minneapolis

Bambridge Peterson, Deputy Director, Metropolitan Inter-County Council

Norm Werner, Coon Rapids City Clerk

Gilbert Wolff, Minneapolis

LETTERS TO THE COMMITTEE

Iver Amundson Jr., Two Harbors

Paul Dow, Executive Secretary, Metropolitan League of Municipalities,

Senator Kelly Gage, Mankato

Robert T. Jorvig, Executive Director, Metropolitan Council

David J. Kennedy, Assistant Senate Counsel

Stanley G. Peskar, Assistant Counsel, League of Minnesota Municipalities

James C. Shipman, Executive Director, Metropolitan Inter-County Council

Teamsters Joint Council #32, Minneapolis

Harry M. Walsh, Special Assistant Revisor of Statutes

William A. Wettergren, Executive Secretary, Minnesota School Boards Association

Arthur Whitney, Minneapolis

John A. Yngve, Regent, University of Minnesota

MINNESOTA CONSTITUTIONAL STUDY COMMISSION

# NATURAL RESOURCES COMMITTEE REPORT

## COMMITTEE

Representative Aubrey Dirlam, Chairman

Senator Stanley Thorup

Mr. Orville Evenson

Research Assistant:

Richard Holmstrom

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The full Constitutional Study Commission failed to accept the recommendation of the Natural Resources Committee as to Section 2 of the proposed Environmental Bill of Rights, discussed on pages 6 and 7 of this report.

The Commission decided that before incorporating the procedural remedies of Section 2 into the Constitution, it would be wise to await the results of Minnesota's experience with the enforcement provisions of the 1971 Environmental Rights Act (Chapter 952, Regular Sessions Laws, 1971), since the procedural remedies of this legislation parallel those provided in Section 2 of the proposed Environmental Bill of Rights.

## 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 held two public hearings. One hearing was in Moorhead on May 5, 1972, the other in St. Paul on June 6, 1972. 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 matters 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 iscussion

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 Constitution 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 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 it. 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.

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.*

*In re Condemnation of Lands, 124 Minn.271,144 N.W.960 (1914)

While the State Forests are, 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 places, 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.

These 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.

The Minnesota Public Interest Research Group also presented a statement at our June 5 hearing, requesting amendment of Sections 4 and 5. This amendment would require certain conditions for 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, Secs. 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.

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.

## 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," prohibited by Article IX, Secs. 5 and 10. Amendment XVIII 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.

Article XVII 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, Sec.6, Subd.2(b)).

The article also authorizes 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, Sec.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 Legislatu 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, Sec.1. If there are adequate changes in Article IX, Article XVII might be substantially shortened or even eliminated. Article XVII, Sec.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, Sec.10. This amendment also authorizes a special tax treatment for forest lands, thus perhaps creating an exception to the provisions of Article IX, Sec.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, Sec.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 CONCLUSIONS

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

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"

Witnesses Presenting Evidence to the Committee:

Peter Benzian, Minnesota Public Interest Research Group
Edmund Bray, The Nature Conservancy
Howard Vogel, Minnesota Environmental Control Citizens Association

Statements Received:

Governor Wendell Anderson
C. B. Buckman, Deputy Commissioner of Department of Natural Resources
Marion Watson, League of Women Voters

Others 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
Cedar Valley Conservation Club
Central Conservation Association
Citizens for Integration of Highways and Environment
Clear Air, Clear Water, Unlimited
Committee on Urban Environment
County Land Commissioners Committee
Department of Agriculture, State
Department of Natural Resources, State
Department of Taxation, State
Environmental Health Division
Environmental Law Committee
Environmental Protection Agency
Environmental Planning
Environmental Sciences Foundation
Friends of the Wilderness
Land Exchange Review Board
Long Lake Conservation Center
MECCA
Metro Clean Air Committee
Minnesota Association for Conservation Education
Minnesota Conservation Federation

Minnesota Council of State Parks
Minnesota Environmental Defense Council
Minnesota Environmental Resources Council, Inc.
Minnesota Federation of Labor
Minnesota Out of Doors
Minnesota Police and Peace Officer's Association
Minnesota Public Interest Research Group
Minnesota Recreation and Park Association, Inc.
Minnesota Tree Farm Committee
Minnesota Water Resources Board
National Wildlife Federation
Nature Conservancy
North Central Forest Experiment Station
Save Lake Superior Association, Inc.
School of Forestry
Scientific and Natural Area Committee
Sierra Club
Soil Conservation Service
Soil Conservation Society
Southern Minnesota Conservation Association
State Soil and Water Conservation Commission
Timber Law Committee
Timber Producer's Association
Upper Midwest Research
W-168 Health Service
Wilderness Watch

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

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 _____"

MINNESOTA CONSTITUTIONAL STUDY COMMISSION

# TRANSPORTATION COMMITTEE REPORT

COMMITTEE

Senator Robert J. Tennessen, Chairman

Mr. Orville Evenson

Representative L. J. Lee

Representative Joseph Prifrel

Research Assistants:

Michael Sieben
Steven Hedges

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The Commission accepted the Minority Report on Highway Provisions, which would eliminate the dedicated highway funds of Article XVI. See pages 56-58.

# I. INTRODUCTION

A state transportation policy must consider all avaialable 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 outling 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 is 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 organizations 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 that 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 chargeable 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 by law. Municipal state-aid funds (9% of total) 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 (29% of the total) are apportioned 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 (62% of the total) 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.

1. 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 program and the disbursements made. The following summary of the share of the Twin Cities Metropolitan Area for 1959-1970 is based upon the "Inventory of Transportation Expenditures in the Metropolitan Area," of the Transportation Planning Program and the Metropolitan Council.

Tables 1 through 4 present, respectively, the statewide totals for highway revenues at all levels of government, the meto area resumes for the same levels, the statewide expenditures and the metro expenditures, all for the fiscal years 1959 through 1970. (See note to the tables 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 sources as the further available breakdowns, e.g., all Minnesota counties or all cities.

Several general points shown by Tables 1 through 4 point out the economic rather than the 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.

(2) No revenue data are 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

* We wish to acknowledge the research and analysis presented by the staff of the Metropolitan Council.

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. Municipal state-aid (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 Programs

The metro area share of statewide totals is shown in Table 5. 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 metro area in 65-69 paid in an estimated 41% of the highway user taxes, and received 13% of the County State-aid (CSAS) grants, 66% of the MSAS grants, and 48% of the trunk highway (TH) maintenance and construction expenditures. This latter figure includes federally financed interstate highway construction. Between 1967 and 1970, the fraction that the interstate program is of the total state highway program, and the metro share of the total state highway program, both have been falling.

Figure 1 shows graphically the metro share of the State Highway Program for 1965-70. Comparison with the metro share of population, autos, motor vehicles, etc., shows 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 goal.

The metro share of 1965-1970 state user taxes (which finance the CSAH, MSAS, and part of the TH programs) is shown in Figure 1 as 42%. This estimate uses (1) the metro share of motor vehicle registrations to compute the metro share of the motor vehicle registration tax and (2) an estimate of the metro share of vehicle miles traveled as the metro share of the gas tax. An alternative estimate, using the metro share of motor vehicle registrations for both taxes puts the metro share of total state user taxes at 45%.

b. Relative Importance of Revenues and Expenditures

Table 6 shows how important each type of revenue and expenditure is to each level of government, for both the metro and the non-metro area. For example, CSAH funds make up 57.2% of highway revenues for non-metro counties, but only 28.4% of revenues for metro counties.

On the expenditure side, at each level of government, the metro area has a higher percentage of its revenues going for construction. This can be partially explained by the fact that almost 90% of Minnesota's population growth occurred in the seven-county metro area.

c. Highway and Street Mileage

The statewide and metro area totals for each highway system are given in Table 7. Unfortunately corresponding data on relative use are not easily available.

### 3. The Metropolitan Share of a Twenty-year State Highway Program

The "backbone" report of the Minnesota Highway Department estimates the funds to be available for non-interstate highway improvements over the next twenty years, and presents a plan to use those funds. The present level of state user tax revenues and present construction costs are assumed. Revenues and costs are sure to increase, but the "backbone" report assumes they will cancel out, so that revenues will meet costs for the proposed construction. We will also assume that the percent of this construction plan which is built in the metro area will not be affected by the growth in revenues and costs.

To these improvements expenditures, we add an estimate of maintenance and other expenditures, CSAH grants, MSAS grants and interstate construction expenditures. In order to arrive at a total state highway program estimate, and the metro share thereof, all the estimates of levels of state expenditures are based on current revenues and costs. However, growth is allowed to affect the distribution of the expenditures between the metro and non-metro areas, as explained below.

a. Trunk Highways: Major Capitol Improvements

The "backbone" system presents a plan designed to meet the following goals:

(1) Promote outstate economic development

(2) Improve accessibility to the major recreation areas

(3) Serve the greatest number of highway users.

Priority 1 plan requires the estimated $800 million which will be available over the next twenty years, based upon an average of $40 million each year. Priority 2 plan will be built later or if additional funds become available. The distribution of the planned expenditures, as presented in the "backbone" report, is as follows:

(Costs are in millions of dollars)

| | Outstate | Metro | State Total | Metro Total |
|---|---|---|---|---|
| Priority 1 | 511 | 302 | 813 | 37.1% |
| Priority 2 | 257 | 153 | 410 | 37.3% |
| Total | 768 | 455 | 1223 | 37.2% |

The total of Priority 1 and Priority 2 expenditures is used here as an estimate of major capital improvement expenditures, shown in Table 8. The "backbone" Priority 1 plan does not include the interstate program (see section f below), but it assumes that the state's interstate system will be completed by 1980, and that $10 million federal assistance will be available each year after 1980 for major trunk highway improvements. This is very conservative, especially when compared to the average of around $70 million we have been receiving each year under the interstate program. Therefore, we have included Priority 2 expenditures in Table 8.

b. Trunk Highways: Non-Capital Improvements

The "backbone" system excludes such non-capital improvements as resurfacing, bridge repairs, spot safety improvements, etc. which are done to keep present roads in minimum tolerable condition. Funding needs are estimated to rise from $15 million in the early 1970's to $25 million by the middle 1980's.

Twenty years of an average annual expenditure of $20 million results in a state total of $400 million for "non-capital" improvements,

as shown in Table 8. The metro share is assumed here to be 30%, which is the present metro share of maintenance and betterments on the state trunk highway system.

c. Trunk Highways: Maintenance and Other

Certainly maintenance costs will be rising, and there is a very good chance that maintenance costs will rise faster than user tax revenues. The "backbone" report deals only with funds available for improvements, i.e., those available after maintenance and administration expenditures have been made. Since we are keeping revenues at current levels, we will use the 1970 state trunk highway maintenance level ($36 million) as the annual level of maintenance over the twenty-year period, for a total of $720 million. However, we will arbitrarily boost the metro share from the "inventory report" estimate of 30% (for 1970) to 35% for our estimate, since the heavily used and complex roads in the metro area will require proportionally greater maintenance.

Following the inventory report, 40% of the annual "other" expenditures (administration, safety, etc.) will be assigned to the metro area. A total of $720 million for maintenance and $420 million for other expenditures, or $1140 million, and the metro/non-metro distribution are shown in Table 8.

d. Grants: County State-Aid Highways

Changes in a county's number of motor vehicles registered relative to the state total will result in an automatic adjustment in the county's CSAH distributions factor, and then in the CSAH allotment which goes to that county. The county's CSAH "needs" and CSAH mileage also affect the distribution factor. In a detailed study ("Highway Revenue and Expenditure Estimates for the Period

1970-1990: Technical Notes, "staff memo, August 14, 1972), using reasonable assumptions of the growth of motor vehicles registered, CSAH "needs" and CSAH mileage, we found the metro share of CSAH allotments fall from 13.7% in 1970 to 12.4% in 1980. Using 12.4% as the average annual metro share over the twenty-year period, and the 1970 level of the CSAH program ($51 million) as the annual state total we desire the twenty-year estimate of $126 million for the metro area (see Table 8).

e. Grants: MSAS Minnesota State Aid Streets

The metro area is expected to grow faster than the total of the state's urban areas over the next twenty years, so its relative share of population and MSAS money needs will increase. The memo mentioned above estimates the metro share of the MSAS program will rise from 67.3% in 1970 to 71.3% in 1980. Using 71.3% as the average annual metro share over the twenty years, and the 1970 level of the MSAS program ($16.5 million) as the annual statewide total, a twenty year estimate of $235 for the metro area is obtained (see Table 8).

f. Interstate Highways

The "backbone" plan does not include the interstate financing, but it assumes that by 1980 the state's interstate system will be completed. The Minnesota Narrative Report for the 1972 National Transportation Needs Study gave $600 million as the cost of completing the interstate system, $400 million being necessary in the metropolitan area. The August 1, 1972 update of the interstate "costs to complete" estimates $429 million for the metro area out of $571 million statewide. These latter figures are shown in Table 8.

The location of the interstate expenditures is essentially already set, so neither these amounts, nor even the (approximately) 10% state share, are subject to the same kind of state discretionary control as the trunk highway fund and grants program.

g. Total State Highway Program

The metro share of the total state highway program is estimated here to be 33% or 38% if the interstate roads are included. This is a decline from the 1965-1970 average of 42% shown in Figure 1, even though the metro share of the state's population (and thus motor vehicles) is expected to increase. The projections memo mentioned above used Metropolitan Council and Minnesota Bureaus of Vital Statistics to forecast a metro share of 53.4% of the state's population by 1980.

h. Metro Share Evaluated

The metro share of expenditures in specific programs can be related to the specific goals which the program is intended to meet. Yet how does one determine the funding between programs? Even if the metro share of each highway expenditure program is "correct" in some sense, it may be true that metro needs are not being met because of relatively lower funding to those programs which address metro needs. It was shown in Table 6, for example, that the seven metropolitan counties had to use property taxes to support 70% of their road and budget expenditures, while non-metro counties had to use property taxes for only 41% of their road and bridge expenditures.

It appears then that there is a growing difference between the metro share of total expenditures and the metro share of total input. It is felt that metro needs will be relatively

under satisfied, although it is difficult to add and compare needs.

Three tentative suggestions of how to redress a potential imbalance might be:

(1) Shifting resources to the MSAS program, which favors the metropolitan area.

(2) Shifting some heavily-used metro area county roads from the CSAH to the trunk highway program.

(3) Thinking of transportation needs more broadly, the state could justify aid to the transit system in the urbanized areas.

Without some changes, it appears that the metro area, with over half the 1980 statewide population, will receive about one-third of the 1980 state user-tax financed highway expenditures.

The tables on pages 25 through 34 were prepared by the staff of the Metropolitan Council.

# FIGURE 1

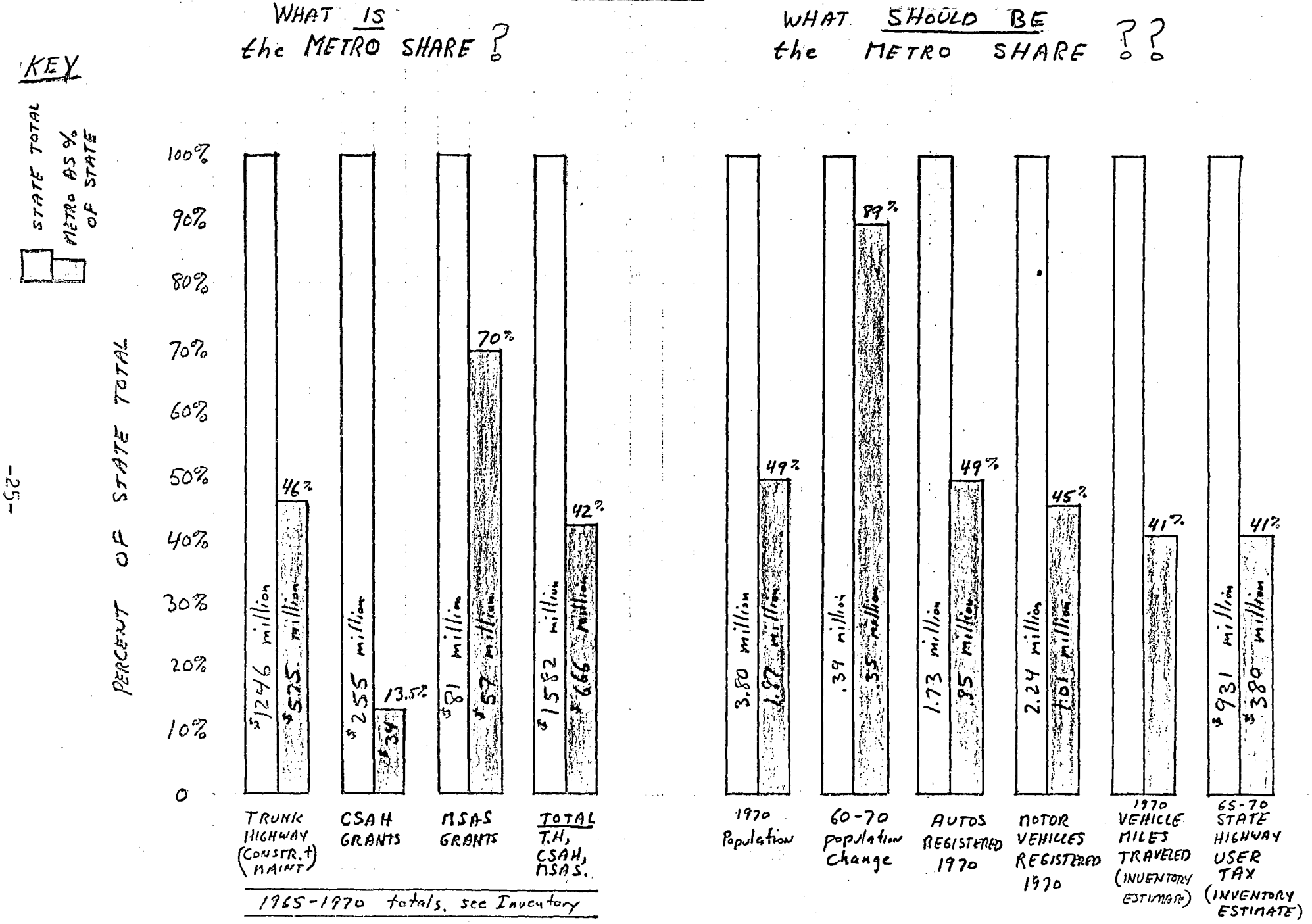
WHAT IS the METRO SHARE?
WHAT SHOULD BE the METRO SHARE??
KEY
STATE TOTAL
METRO AS % OF STATE
PERCENT OF STATE TOTAL
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0
$1246 million
$575 million
46%
$255 million
$34
13.5%
$81 million
$57 million
70%
$1582 million
$665 million
42%
3.80 million
1.87 million
49%
.39 million
.35 million
89%
1.73 million
.85 million
49%
2.24 million
1.01 million
45%
41%
$931 million
$380 million
41%
TRUNK HIGHWAY (CONSTR.+ MAINT.)
CSAH GRANTS
MSAS GRANTS
TOTAL T.H., CSAH, MSAS.
1965-1970 totals, see Inventory
1970 Population
60-70 population Change
AUTOS REGISTERED 1970
MOTOR VEHICLES REGISTERED 1970
1970 VEHICLE MILES TRAVELED (INVENTORY ESTIMATE)
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)

| | 1959 | 1960 | 1961 | 1962 | 1963 | 1964 | 1965 | 1966 | 1967 | 1968 | 19 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| hway)(a) | | | | | | | | | | | |
| | 49,874 | 57,191 | 59,861 | 53,867 | 59,961 | 78,251 | 98,141 | 99,186 | 92,701 | 113,692 | 90 |
| | 55,863 | 58,637 | 60,565 | 61,633 | 63,937 | 73,940 | 76,549 | 82,845 | 86,616 | 100,657 | 106 |
| se | 977 | 2,098 | 1,717 | 1,507 | 1,584 | 2,125 | 1,899 | 1,883 | 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 |
| gency Funds)(b) | 8,696 | 8,049 | 6,908 | 5,331 | 4,222 | 5,783 | 5,794 | 4,248 | 6,227 | 6,032 | 5 |
| Fed. Ag. Funds)(c) | | | | | | | | | | | |
| Funds | 416 | 284 | 385 | 236 | 173 | 185 | 498 | 448 | 547 | 222 | |
| (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 |
| 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 |
| Taxes | 132 | 246 | 19 | 100 | 62 | 93 | 468 | 451 | -- (est) | 951 | |
| | 9,847 | 11,179 | 9,848 | 10,275 | 10,434 | 9,894 | 11,201 | 10,434 | 11,071 | 11,708 | 13 |
| AGES (e) | | | | | | | | | | | |
| (MSAS) | 8,108 | 8,371 | 9,186 | 9,038 | 9,451 | 10,967 | 11,370 | 11,662 | 12,443 | 14,268 | 15 |
| perty 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 |
| AL (f) | 88,281 | 93,662 | 98,318 | 98,995 | 102,939 | 118,410 | 121,842 | 132,542 | 137,283 | 159,569 | 170 |
| oles) | | | | | | | | | | | |

TABLE 2: SELECTED HIGHWAY, STREET, AND STREET-RELATED REVENUES ORIGINATING IN METRO AREA
(in thousands of dollars)

| ) | 1959 | 1960 | 1961 | 1962 | 1963 | 1964 | 1965 | 1966 | 1967 | 1968 | 1 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| TAX (g) | | | | | | | | | | | |
| ay Portion) | | | | | | | 30,620 | 33,387 | 34,906 | 41,068 | 44 |
| . Funds | | 12 | | | | | 40 | 58 | 7 | -- | |
| r (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 |
| . Funds | | | | | | | 10 | 9 | | | |
| & St. Repl. | | 732 | | | | | 690 | 722 | | 703 | |
| . Taxes | | 46 | | | | | 38 | 37 | | 35 | |
| | | 778 | | | | | 738 | 768 | (est) 778 | 738 | |
| LAGES (j) | | | | | | | | | | | |
| r (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)

| a) | 1959 | 1960 | 1961 | 1962 | 1963 | 1964 | 1965 | 1966 | 1967 | 1968 | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
| a | | 84,825 | | | | | 134,873 | 141,164 | 148,527 | 186,468 | 17 |
| e | | 15,665 | | | | | 23,789 | 25,735 | 31,855 | 29,365 | 3 |
| | | 13,797 | | | | | 16,441 | 17,769 | 16,798 | 18,005 | 1 |
| | | 114,287 | | | | | 175,103 | 184,668 | 197,180 | 233,838 | 22 |
| | 23,196 | 25,829 | 27,792 | 30,888 | 32,842 | 35,933 | 32,884 | 41,832 | 38,390 | 47,235 | 5 |
| | 23,694 | 27,365 | 26,639 | 28,789 | 27,988 | 27,981 | 32,991 | 34,837 | 37,260 | 31,529 | 4 |
| | 194 | 279 | 166 | 284 | 295 | 142 | 113 | 1,184 | 1,762 | 838 | |
| | 47,084 | 53,473 | 54,597 | 59,961 | 61,125 | 64,056 | 65,988 | 77,853 | 77,412 | 79,602 | 9 |
| | 2,285 | 2,527 | 2,017 | 1,699 | 1,840 | 1,796 | 1,486 | 1,690 | | 1,889 | |
| | 6,431 | 7,567 | 7,483 | 8,579 | 7,698 | 7,420 | 10,142 | 8,854 | | 9,027 | 1 |
| | 8,716 | 10,094 | 9,500 | 10,278 | 9,538 | 9,216 | 11,628 | 10,544 | (est) 10,730 | 10,916 | 1 |
| LAGES (o) | | | | | | | | | | | |
| | 25,003 | 27,351 | 29,439 | 31,058 | 25,905 | 25,678 | 26,802 | 36,908 | 45,567 | 43,875 | 5 |
| | 19,261 | 21,292 | 22,336 | 24,944 | 23,905 | 24,962 | 28,208 | 26,349 | 29,934 | 29,796 | 3 |
| | 44,264 | 48,643 | 51,775 | 56,002 | 49,810 | 50,640 | 55,010 | 63,257 | 75,501 | 73,671 | 8 |
| | | 140,532 | | | | | 196,045 | 221,594 | 234,274 | 279,467 | 28 |
| | | 71,889 | | | | | 95,130 | 95,775 | 107,989 | 99,717 | 12 |
| | | 14,076 | | | | | 16,554 | 18,953 | 18,560 | 18,843 | 1 |
| | | 226,497 | | | | | 307,729 | 336,322 | 360,823 | 398,027 | 42 |

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 | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 40,670 | | | | | 70,681 | 75,582 | 83,550 | 92,769 | 8 |
| | | 3,695 | | | | | 5,944 | 6,183 | 9,333 | 8,145 | 1 |
| | | 6,087 | | | | | 7,938 | 8,707 | 8,647 | 8,416 | |
| | | 50,452 | | | | | 84,563 | 90,472 | 101,530 | 109,330 | 9 |
| | | 4,322 | | | | | 6,991 | 11,938 | 8,442 | 11,001 | 1 |
| | | 3,914 | | | | | 5,049 | 6,143 | 7,305 | 6,090 | |
| | | 18 | | | | | 1 | 860 | 1,535 | 308 | |
| | | 8,254 | | | | | 12,040 | 18,941 | 17,282 | 17,399 | 2 |
| | | 301 | | | | | 286 | 310 | | 257 | |
| | | 477 | | | | | 633 | 593 | | 513 | |
| | | 778 | | | | | 919 | 903 | (est) 820 | 770 | |
| LAGES (s) | | | | | | | | | | | |
| | | 16,644 | | | | | 16,775 | 23,487 | 30,403 | 25,623 | 3 |
| | | 10,932 | | | | | 14,969 | 13,271 | 16,039 | 15,433 | 1 |
| | | 27,576 | | | | | 31,744 | 36,758 | 46,442 | 41,056 | 5 |
| | | 61,938 | | | | | 94,733 | 111,353 | 122,673 | 129,650 | 12 |
| | | 19,017 | | | | | 26,595 | 26,190 | 33,219 | 30,181 | 4 |
| | | 6,015 | | | | | 7,939 | 9,567 | 10,182 | 8,724 | |
| | | 87,059 | | | | | 129,267 | 147,074 | 166,075 | 168,075 | 17 |

TABLE 5: METRO AREA HIGHWAY, STREET, AND STREET-RELATED REVENUES AND EXPENDITURES AS A PERCENTAGE OF STATEWIDE TOTALS

| UES - 1965-69 SUMS | | EXPENDITURES - 1965-69 SUMS |
|---|---|---|
| | | STATE |
| ghway User Tax | 40.9% | Construction |
| | | Maintenance |
| TY | | |
| leral Misc. Funds | 5.1% | Subtotal |
| AH grants | 13.0% | |
| perty Tax & St. Replace. | 33.9% | COUNTY |
| | | Capital |
| Subtotal | 23.0% | Current |
| SHIP - Subtotal | 6.7% | Subtotal |
| S & VILLAGES | | TOWNSHIP |
| AS grants | 65.8% | Capital |
| sidual (Property Tax) | 56.0% | Current |
| Subtotal | 57.8% | Subtotal |
| | | CITIES & VILLAGES |
| | | Capital |
| | | Current |
| | | Subtotal |
| | | ALL LEVELS |
| | | Capital |
| | | Current |
| | | Other |
| | | Total |

CE:
UES: Figures in Table 2 as a percent of corresponding figures in Table 1.
URES: Table 4 figures as a percent of Table 3 figures.

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% | | |
| ers License | 1.0% | | |
| l Fines | .3% | | |
| r | 3.8% | | |
| ubtotal | 100.0% | | |
| Y | | | |
| ral Misc. Funds | .6% | .1% | .7% |
| way User (CSAH) | 50.5% | 28.4% | 57.2% |
| erty Tax | 47.7% | 70.3% | 40.9% |
| r | 1.2% | 1.1% | 1.2% |
| ubtotal | 100.0% | 100.0% | 100.0% |
| HIP | | | |
| ral Misc. Funds | 1.5% | .1% | 1.6% |
| erty Tax | 92.7% | 94.6% | 92.4% |
| or & Cig. Taxes | 5.8% | 4.8% | 6.0% |
| ubtotal | 100.0% | 100.0% | 100.0% |
| S VILLAGES | | | |
| way User (MSAS) | 18.4% | 21.0% | 14.7% |
| dual (Property Tax) | 81.6% | 79.0% | 85.3% |
| ubtotal | 100.0% | 100.0% | 100.0% |

E: Tables 1-4

| EXPENDITURES - 1965-69 SUMS | State | Metro | N M |
|---|---|---|---|
| STATE | | | |
| Construction | 77.2% | 83.2% | 7 |
| Maintenance | 14.3% | 8.3% | 1 |
| Other | 8.5% | 8.5% | |
| Subtotal | 100.0% | 100.0% | 10 |
| COUNTY | | | |
| Capital | 53.9% | 57.0% | 5 |
| Current | 45.0% | 38.7% | 4 |
| Other | 1.1% | 4.3% | |
| Subtotal | 100.0% | 100.0% | 10 |
| TOWNSHIP | | | |
| Capital | 16.4% | 32.0% | 1 |
| Current | 83.6% | 68.0% | 8 |
| Subtotal | 100.0% | 100.0% | 10 |
| CITIES & VILLAGES | | | |
| Capital | 57.6% | 62.3% | 5 |
| Current | 42.4% | 37.7% | 4 |
| Subtotal | 100.0% | 100.0% | 10 |
| ALL LEVELS | | | |
| Capital | 66.4% | 74.5% | 6 |
| Current | 28.6% | 19.9% | 1 |
| Other | 5.0% | 5.6% | |
| Total | 100.0% | 100.0% | 10 |

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 |
| hway (State) | 11,840.5 | 1,017.4 | 8.6% | 12,102.3 | 1,095.0 |
| n-dup) | 29,012.5 | 1,683.2 | 5.8% | 29,547.6 | 1,756.2 |
| n-dup) | 854.1 | 489.2 | 57.3% | 1,289.6 | 813.1 |
| AH & MSAS | 85.3 | 57.4 | | 61.8 | 46.1 |
| oads | 15,961.0 | 727.4 | 4.6% | 15,407.4 | 758.3 |
| ads | 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 |
| l 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 3
Minnesota Highway Department

TABLE 8: ESTIMATED METRO SHARE OF A TWENTY-YEAR STATE HIGHWAY PROGRAM
(in millions of dollars)

| | METRO | | NON-METRO | | STATE TOTAL | | M SH |
|---|---|---|---|---|---|---|---|
| Capital Improvements | 455 | | 768 | | 1223 | | 37 |
| apital 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 | |
| ates | 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

of the fiscal years of each level of government, see Note t.

: 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.
: Information provided to transportation committee by MHD, Attachment 1A.
No detail by county given.
: Statistical and Financial Information for Counties, MDH, 1970 and previous years.
County detail given
NTS: Federal Agency funds not included. Property tax includes state replacements (sales tax in 1969) for some counties.
: Statistical and Financial Information for Townships, MHD, for fiscal year ending March 31, 1970 and previous years.
County subtotals given
NTS: Property tax includes state replacements (sales tax in FY69 and FY70) for some counties.
: 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.
Public Examiner report provides detail by city and village. Statistical Supplements have MSAS allotments by city.
NTS: 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.
: State user total is total of Trunk Highway User Revenues and CSAH and MSAS grants.
NTS: In addition, federal aid comes from federal user taxes. See Inventory, Table I.
: Total user taxes, before collection fees, are estimated in Inventory (Table IV, V) using Metro Share of vehicle registrations and
traveled.
No county estimates from Inventory. MDH provided Transportation committee with county estimates based solely on vehicle reg
NTS: 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 trunk
revenues.
for Metro - See note c)
for Metro - See note d)
for Metro - See note e)

S

: Statistical Supplements to the Biennial Report, MDH, 1968-70, and previous years, as aggregated in "Inventory."
NTS: "Other" is administration, safety and miscellaneous
e c)
e d)
: Report of the Public Examiner for cities and villages, fiscal year ending up to June, 1970, and previous years.
Individual city data given; county subtotals are not presented.
: For method, See Inventory Report
County data not available.
for Metro - See note c)
for Metro - See note d)
for Metro - See note o)
ears: 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.

## 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]

| 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 are 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 $13,600,000,000 burden on the American public.[29]

While one must be careful in interpreting 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]

| Type of Vehicle | No. of Deaths | No.Deaths/100,000 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 energy 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, buses, 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.

According 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 needs of 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 subsidization 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

subsidization 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 shipments 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 the 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 saving 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. As such it still has the inherent rigidity undesirable in constitutions. Fear of inadequate planning time and of 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.[56]

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.[57]

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.

## 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 IX, 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 constitutionally frozen taxation policy provided in Article IV, Sec. 32(a), 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(a).

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 minority 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(a) 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. Quarles,

[17] Testimony of John G. Olin,

[18] Address by John R. Quarles,

[19] Testimony of John G. Olin,

[20] Ibid.

[21] Ibid.

[22] Address by John R. Quarles,

[23] Metropolitan Development Guide, Transportation Section, Metropolitan Council, February 25, 1971, p.14.

[24] New atterns: Tranportation Options for Model City Residents, Planning and Development Dept., City of Minneapolis, 1971, p.49

[25]Ibid., p.28

[26]Testimony of Marsha Townley, Greater Metropolitan Federation, May 21, 1972

[27]Address by John R. Quarles

[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.

[39]"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.

[40]"Communities With Grain Elevators Located on Railroad Lines and on Highways with Less than Nine Ton Load Limits," Department of Economic Development, June, 1972.

[41]Report of the Minnesota Public Service Commission, Docket Number 0417-SE, File Number A-8347, May 16, 1972.

[42]Letter from Gordon Forbes, Counsel, Minnesota Railroads Association, June 13, 1972.

[43]Testimony of Burlington Northern, Chicago and North Western, Soo Line, etc., June 29, 1972.

[44]To Those Interested in the Future of the Midwest," open letter from Larry S. Provo, President, Chicago and North Western Transportation Company, June 1970.

[45]Memo to Managers and Presidents of Local Member Coops, Land O' Lakes, Inc., Fort Dodge, Iowa, December 15, 1971.

[46]Ibid.

[47]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, April 21, 1972.

[57]Congressional Quarterly Weekly Reports, July 15, 1972, p.1735-1736.

# VII BIBLIOGRAPHY

## Published Material


Constitutions of the United States, Legislative Drafting Research Fund, Columbia University, New York.

Metropolitan Development Guide, Transportation Section, Metropolitan Council, St. Paul, 1971.

New Patterns, Transportation Options for Model City Residents, Planning and Development Department, City of Minneapolis, 1971.

Accident Facts, National Safety Council, Chicago, 1971.

Rich, Richard A., "System Energy and Future Transportation," Technological Review, January, 1972.

"The Democratic Platform," Congressional Quarterly Weekly Reports, June 19, 1972.

Minnesota Constitution.

Montana Constitution.

Michigan Constitution.

Minnesota Statutes Annotated.

United States Code Annotated.


## Unpublished Material and Staff Research


Report to the Constitutional Study Commission, Minnesota Department of Highways, July 21, 1972.

Address by John R. Quarles, Jr., Assistant Administrator, Environmental Protection Agency, to the 14th Highway Transportation Congress, Washington, D.C. May 31, 1972.

"Railroad Mileage in the State of Minnesota," Minnesota Public Service Commission, August 15, 1972.

"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.

"Communities with Grain Elevators Located on Railroad Lines and on Highways with Less than Nine Ton Load Limits," Department of Economic Development, June, 1972.

Report of the Minnesota Public Service Commission, Docket Number 0417-SE, File Number A-8347, May 16, 1972.

"To Those Interested in the Future of the Midwest," open letter from Larry S. Provo, President, Chicago and North Western Transportation Company, June 1970.

Memo to Managers and Presidents of Local Member Coops, Land O' Lakes, Inc., Fort Dodge, Iowa, December 15, 1971.

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.

Letter from Department of Transportation to the President of the Senate and Speaker of the House of Representatives, April 21, 1972.

Letter from Department of Transportation to the President of the Senate and Speaker of the House of Representatives, November 5, 1971.

Transportation Provisions in the Minnesota Constitution, Staff paper by Michael Sieben, April 20, 1972.

A Preliminary Legislative History: Article XVI of the Minnesota Constitution, Staff paper by Michael Sieben, February 3, 1972.

Staff Memorandum on Article XIX of the Minnesota Constitution, by Steven Hedges.

A Study of State Highway Trust Funds, Research paper by Larry Dessem, Macalester College, May 16, 1972.

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
State Representative 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 Lemke, Wabasha and Winona Counties
State Representative Victor Schul 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
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State Representative Willis Eken, Twin Valley
Ted Cornelious, Bemidji Chamber of Commerce
Leonard Dicke son, 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, Barnesville 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
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Mark Sullivan, Prior Lake
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May 12, 1972, St. Paul

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Bob Berman, American Institute of Planners
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June 15, 1972, St. Paul

State Representative Ernest Lindstrom
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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
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