COMMENTARY ON MINNESOTA STATE CONSTITUTION

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INTRODUCTION

"Nobody but nobody reads state constitutions, or not, at least, if they can help it."*

Though no one would expect state constitutions to be best sellers, the fact remains that the basic laws of each state deserve more readers than they attract. Our forefathers believed that constitutions were to be read, as well as to be written, by private citizens and that they were to educate in the "first principles" of government. These ideas must have been forgotten, for most of our 50 constitutions are wordy, difficult to understand, and often inconsistent. Yet the reader with imagination may see beyond the barriers of words to find that important questions of political and economic philosophy as well as a variety of ideals and prejudices are being stated. Interesting questions occur to the thoughtful reader: Which groups are getting preferred treatment in this state? How did the authors and the public feel about the role of the voters, the legislature, the governor, the judges? Did they feel differently about them when the document was written than they did later on when amending it? How have they expressed their feelings about minority groups, religious freedom, virtue, the rise of corporations, the growing urban communities? Did they mean for the constitution to be read by its citizens, or is it too technical in language and too involved with detail for the layman to find those "first principles" which constitutions emphasize?

Are constitutions really necessary?

After reading constitutions and seeing how they are sometimes ignored in practice (Minnesota is supposed to reapportion every 10 years, says the constitution!), readers may question the need for written constitutions. England has never had one. Much that makes our state government work for example--our political parties--is not even in our constitution. Why then constitutions?

Historically they were first used by the colonists to claim their rights against the Crown. Later constitutions were written to guarantee the liberties of citizens against their own government. Chiefly, though, they seemed necessary in our federal system to define roles of the state and national governments. We think of a constitution as outlining the principal organs of government, distributing the powers of government among them, and defining the relationships between the government and the people. It is the basic law, the framework, a statement of the ground rules within which statutory laws can be drafted to meet changing conditions.

Justice Cordozo said eloquently, "A constitution should state, not rules for the passing hour, but principles for an expanding future."

How to recognize a good constitution

A constitution should be brief, clearly stated, and confined to those fundamentals which reflect the fixed convictions of the vast majority of the people. It should concern itself with ends more than means. It should be flexible--to allow for orderly change, to prevent the shackling of future legislatures, and to minimize the need for litigation. A quick test of a good constitution is: has it required a great many amendments, has it allowed good laws to be passed as well as prevented poor ones from passing, and has it permitted efficient and responsible administration.

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* Robert B. Dishman, State Constitutions: The Shape of the Document

Common divisions of a constitution

Usually state constitutions include the following divisions: a preamble, a bill of rights, articles on the legislative, executive and judicial branches, a separation of powers statement, and provision for changing the constitution. They may also include articles on: highways, education, welfare, finance, local government, regulation of corporations, banks and public utilities, and a schedule describing how the constitution is to go into effect.

How state constitutions changed

Students of state constitutions agree that the best state constitutions are our oldest ones, e.g., New Hampshire's, and our newest, e.g., Alaska's. These are brief and state basic principles. Nineteenth century constitutions became longer as more details were included. The public had come to distrust the legislature; therefore detailed restrictions on this branch were added. But by the early twentieth century, constitutions reflected the public's interest in a stronger executive branch, their impatience with the overly conservative courts (this introduced more constitutional detail), and some partially restored confidence in their legislatures. Readers of Minnesota's constitution will see evidence of these changes in public thinking.

We look ahead

Past League studies provided background on the history of Minnesota's 1858 Constitutional Convention, discussed general areas of needed constitutional change, and emphasized the importance of calling a constitutional convention. This year the Minnesota LWV is providing its members with an overall look at our state constitution with this accompanying article-by-article commentary. We hope it will reveal enough about the constitution to enable delegates to our May 1962 State Council to decide which articles most need change. These articles would then be given further study (as has already been done with the amending article) to lead to a consensus on the changes desired by the members. This in turn could draw the League into active partnership with legislators in drafting one or more new articles in the form of amendments to bring to the 1963 legislature.

How to Study the Commentary

Your copy of the Minnesota Constitution, prepared in 1957 by the Secretary of State's office, was received earlier. Unlike our federal constitution, Minnesota's amendments have been incorporated into the text. Nevertheless, it is possible to note the changes made in the original document by referring to the amendments as listed on page four. You will discover changes in thinking by noting the dates amendments were adopted and the votes by which they were passed.

As you read, evaluate first which articles seem most in need of overall change and then which articles have sections that badly need change. Consider, too, which changes are going to be difficult or relatively easy to effect.

ARTICLE 1. BILL OF RIGHTS

Why include one?

A Bill of Rights, found in every state constitution, is included to protect the individual from arbitrary or tyrannical treatment by his government, and to guarantee to the citizen personal and property rights. Prior to the 14th amendment to the federal constitution, the state constitutions were the citizens' only protection, as the federal Bill of Rights restricted only the national government. It is suggested by Robert Hutchins that the individual now needs protection from "the possible dangers of a police state; protection for full freedom of communication; protection from the arbitrary character of the bureaucratic state, and from the 'remorseless tendency of the industrial system.'" Some feel that protection is needed in the following areas: racial segregation, arbitrary administrative actions, the right to organize and bargain collectively (although Hawaii's and Alaska's new constitutions leave this matter for legislative determination), and the rights of conscientious objectors in reference to state militia.

The Minnesota Bill of Rights closely parallels that of Wisconsin (written in 1848) and was considered by Professor William Anderson of the University of Minnesota in 1921 to be the most satisfactory article in our constitution. Checked point by point with the Model Constitution* it matches major section for major section. There have been five amendments to this article.

MCC Recommendations

The Minnesota Constitutional Commission's report in 1948** suggests two substantive changes in Article 1: in Section 2, to add, "The legislature shall not abridge the right of the people peaceably to assemble and to petition the government for redress of grievances," and in Section 10, to make evidence obtained by unreasonable search and seizure inadmissable in criminal proceedings.

The MCC notes that Section 2 on slavery is superseded by the federal constitution; they recommend deleting Section 15 on feudal tenures as not a useful section. Section 18 concerning peddling is an example of special protection (for farmers and consumers) and according to W. Brooke Graves of the National Municipal League, matters of this nature should be statutory law rather than constitutional law.

No changes have been made in this article since the Commission's report. A subsequent decision of the United States Supreme Court, which made inadmissible in court evidence seized without a warrant, reverses an earlier Minnesota Supreme Court ruling. Experts still feel this safeguard should be in our Bill of Rights. In addition, there is the question of whether to include a provision against the use of wire tapping for gaining evidence. Only New York has one; Alaska was unable to agree on suitable language which would make possible desired exceptions to such a restriction. Wire tapping does go on. Some advocate a restricted use of listening devices; yet the right of privacy can be eroded by such methods.

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* Model State Constitution, Committee on State Government, 1948

**This legislative-appointed committee was composed of 8 senators, 8 representatives, 1 administrative official, 1 judge, and 3 laymen.

ARTICLE 2. NAMES AND BOUNDARIES

Authorities suggest this article need not be in a constitution, as this can be a statutory matter. Also this article is incomplete as Lake of the Woods has never been added to it. The Minnesota Constitutional Commission suggested changing the term "British Possessions" to "Dominion of Canada" in Section 1, and in Section 3 suggested a wording change to allow levying of a tax on federal property if permitted by Congress. This article has never been amended.

ARTICLE 3. DISTRIBUTION OF THE POWERS OF GOVERNMENT

This article, while found in almost all constitutions, is considered unnecessary by W. Brooke Graves in his book, State Constitutional Revision. However, he considers it too established by long usage to eliminate. Constitutions, he points out, should be realistic and reflect government as it operates. This article is unrealistic in that there can be no strict separation of the three branches — executive, legislative and judicial. Secondly, "department" does not describe the executive branch with its numerous popularly elected officials and its quasi-independent boards and commissions, nor do the numerous and loosely related courts constitute a judicial "department."

ARTICLE 4. THE LEGISLATIVE ARTICLE

A. Introduction

The framers of Minnesota's Constitution believed, like most citizens of the time, that weak government was good government, strong government dangerous government. Therefore, Minnesota's legislators were not given the broad and flexible powers necessary for the complex problems of our day. Furthermore, our legislative article (and our entire constitution, of course) suffers from the hasty, faction-ridden, disorganized manner in which it was compounded — bit by bit, in a few days, by 10 men -- from two completely different documents which somehow had to be made one.

Inevitably these two factors — fear of a strong legislature, and hasty improvisation -- have left Minnesota with a legislative article that needs strengthening, reorganization, and deletion. Unfortunately, the citizen is still not fully convinced of the need for an effective, continuously functioning, democratic, well-staffed, and adequately compensated legislature. Unfortunately, also, many legislators look askance at change — even when for their own benefit— and all legislators lack time for a careful examination of the legislature's deficiencies and its needs.

B. What changes have been made in Article 4 since 1857?

Length of session has always been a controversial matter. Our original constitution allowed unlimited annual sessions. This grant of freedom was quickly rectified within three years by limiting sessions to 60 days; it was further restricted by imposition of biennial sessions in 1877. By 1888, this 60 days of lawmaking every other year had proved so inadequate that the 60 days were lengthened to 90.

Terms of representatives and senators were changed from one to two years, and from two to four years, respectively, when annual sessions were made biennial.

Introduction of bills was limited to the first 70 days of the session when the session was lengthened to 90 days. Bills, could, however, be introduced with the governor's written consent after that date -- a provision which has largely nullified the purpose of this amendment. (This increased executive power, decreased legislative discretion.)

Veto power over individual items in appropriation bills was given to the governor in 1876, by a tremendous majority of 10 to 1. (Another increase in executive over legislative power, whatever its wisdom.)

Three inapropos sections (taxation of railroads, investment of proceeds from internal improvement lands, and prohibition of food market pools) were either amended to their present form or added between 1871 and 1888.

Restrictions on special legislation were added in 1881 and 1892. However, until this provision was changed to conform with the Home Rule Amendment of 1958, the legislature proved highly ingenious in skirting the restrictions.

In summary, except for lengthening the terms of legislators, the originally limited powers of our legislature were further restricted in the century following the adoption of Minnesota's constitution.

C. What changes were suggested by Minnesota Constitutional Commission of 1947?

The MCC proposed far-reaching changes in Article 4. These proposals were of four kinds: (1) substantive changes; (2) reorganization; (3) deletions; (4) additions.

(1) Substantive proposals

A. Legislative sessions could be of any length, subject to discretion of the two bodies. That is, within 75 days of convening the legislature, could, by concurrent resolution, extend the 90-day session to any date it chose. (A continuous body would thus have been possible.)

b. Special sessions could be called, not only by the governor, as now, but also by such means as the legislature chose to enact into law or by joint rules of both houses.

c. Reapportionment was modified as to basis, the urban center being under-represented in the senate; action was to be enforced after every census by a bipartisan commission.

d. Legislators could, by resigning, run for or be appointed to other state or federal offices. The old provision disqualifying legislators from holding other office "kept qualified men from accepting legislative membership or continuing in it." A legislator was still to be prohibited from appointment to an office which was created by, or the compensation of which was increased by, the legislature of which he was a member. This prohibition was not to apply to any other elective offices -- nor to remain in effect for a year after the term expired.

e. A change in the method of taxing railroads (Section 32, a) was no longer to require a referendum vote, but the gross earnings tax on railroads would remain in lieu of other taxes.

(2) Deletions included: (a) revenue bills were no longer to originate only in the house. This was deemed a historic relic dating from colonial days when only one house was popularly elected. By allowing both houses to introduce revenue measures the legislature's work would be speeded up. (b) Excessive penalties on legislative officers for refusing to sign bills were removed. (c) Requirement that every bill be read three different days, etc. (These first three deletions were to give the legislature greater power over its internal procedures.) (d) Deleted because superseded were sections on pools on market foods (by federal antitrust laws); and election of senators (by federal legislation).

(3) Reorganization changes would have put together in the same section of Article 4 scattered sections on qualifications, eligibility, and contests for legislative office; procedural matters of rules and quorum; recording of votes and time for executive consideration of bills; reapportionment (Sections 23 and 24 both combined with 2, described above). Other provisions would be moved to other more appropriate articles: exclusion from office because of "infamous" crimes to Elective Franchise Article; legislative oath of office and uniform oaths for all branches to Miscellaneous Article; internal improvement lands section to combined section on state lands in the Education Article. Special laws relating to townships, cities and villages were to be moved to the Home Rule Article. Other provisions forbidding special laws on specific subjects were suggested for recodification in Article 4.

(4) Only addition to legislative powers was that no purely legislative rules were to require governor's consent.

Comment: Although far-reaching changes were proposed by the MCC, the surprising retention was protection of railroads from ordinary taxation, doubtless a necessary compromise.

D. Have other pertinent changes been widely suggested?

The post-auditor, an officer who would report to the legislature on how appropriated funds have been spent, is considered a matter for constitutional protection by many authorities. Granting the governor more time for considering a possible veto is still another suggested change.

E. Has the League a position on any sections of the Legislative Article?

Lengthened session (general stand in favor, no specifics, no lobbying. Currently consensus being taken on proposed Amendment No. 3 to lengthen the legislative session.)

Mandatory reapportionment provisions with effective sanctions (specific criteria; coming federal Supreme Court decision on whether it will rule on Tennessee's failure to reapportion might influence past League stand)

Post-auditor (general stand in favor, no lobbying)

F. What are the possible avenues to reform of Article 4?

1. Constitutional Convention. (How dead is this issue?)
2. Another commission to review and update legislative changes and needs.
3. Section by section change. (Should the League suggest priority?)
4. Whole-article revision, as used for judicial reform and home rule changes. (Advantages are obvious, but odds are high against making a package of so many different kinds of changes as embodied in Article 4, unless a commission report were behind the reform.)

G. Would thorough revision of Article 4 insure an efficient legislature?

No. Committee structure and function, caucus organization, party designation, lobby registration, conflict of interests, committee and house records, legislative compensation, research facilities all are matters for statutes or rules, not the constitution.

ARTICLE 5. THE EXECUTIVE

During the revolutionary period when the colonial governors were appointees of the King, the pattern for state governments with weak gubernatorial provisions evolved. However, the twentieth century has seen state governments increase in size and complexity and the trend in recent years has been to strengthen and unify the executive department. Minnesota has followed this trend with two recent amendments: in 1958 the people passed an amendment providing four year terms for state constitutional officers to take effect in 1963, and in 1960 we passed an amendment clarifying the gubernatorial succession. The latter permitted provision by law for succession to the office of governor in case of inability of both the Governor and Lieutenant Governor.

Constitutional Officers

In accordance with a shorter ballot, and to further strengthen the governor, we might consider reducing the number of constitutionally elected officers from the present six to three or two, or even to one -- as the Model State Constitution recommends. Some questions to be considered here are: Should the governor and lieutenant governor be elected jointly on a party ticket? Senator Erickson in the 1961 legislature proposed such a bill. Do we need a lieutenant governor? Thirteen states have eliminated this office. Hawaii and Alaska have combined the functions of lieutenant governor and secretary of state. Hawaii elects only a governor and a lieutenant governor; Alaska elects only a governor and a secretary of state. The office of treasurer is largely a non-policy making position. Should this be an elected position? Then, would we wish to split the duties of the auditor between a controller responsible to the executive and a post auditor directly responsible to the legislature? Should the attorney general be independently elected as recommended by the MCC or be an appointed officer in the governor's cabinet as provided in several of the newer constitutions?

Other possible changes

Section 4, stating the powers and duties of the governor, might be streamlined, with the legislative and administrative functions of the governor more clearly defined and more concisely stated. Possibly further clarification is also needed of the governor's powers under martial law. It should be noted here that, unlike the legislature which has all powers not specifically denied it, the governor has only those powers explicitly given him. Modeled after the federal practice in law and included in the Alaskan constitution is a provision giving the governor the power to make, by executive order, such changes in his administrative organization as he may deem necessary. These changes become law unless modified or disapproved by a majority of the legislature. This provision clearly fixes executive responsibility by giving the power of initiating necessary administrative changes to the executive where such changes are more likely to begin.

Specific changes in the present article recommended by the MCC are: 1) to remove the office of secretary of state and treasurer from the constitution with the legislature determining whether they are to be continued; 2) to provide for an executive budget; 3) to restructure the state board of pardons by replacing the chief justice with a person appointed by the governor and approved by the senate; and 4) to enable the governor to restrict a special session of the legislature to "matters specified in the call." The MCC also recommended that civil service be explicitly included in the constitution, although other authorities would leave this a statutory matter.

Other Articles Affect Governor

The governor's powers are also limited by constitutional provisions outside the executive article; restrictive language in other parts of the constitution may also be a hindrance to the governor in taking effective leadership. For example, a constitutional limitation on borrowing has made it difficult for the governor to present a realistic capital improvement budget to the legislature. The citizens of a state look to the governor for effective leadership. This leadership comes not only from his administrative duties, but from his legislative and political powers. Changing specific provisions in the executive article may be helpful, but they cannot provide the whole answer to effective leadership.

ARTICLE 6. THE JUDICIARY

The present Article 6 is an amendment to the constitution adopted in 1956. It represents a rewriting of the old Judiciary Article, incorporating many improvements suggested by those interested in judicial reform, and moving in the direction of clarification and simplicity. Yet some knowledgeable people, like Maynard Pirsig of the University of Minnesota Law School, writing in the Minnesota Law Review in 1956, regard this amendment as only a limited advance because it failed to do anything about several major needs of court organization, such as effective administration of the courts and reorganization of the lower courts. Plans to meet these major needs have been put forth by committees and commissions. A survey of these plans, and what became of them, may clarify the problem of judicial reform.

The JCC Report

The first recommendation calling for complete revision of the Judiciary Article came in 1942 from the Judicial Council Committee on the Unification of the Courts, headed by Associate Justice Charles Loring. The report contained these major features:

A. Establishment of a unified court system, containing supreme court, district court, and county court departments. This was intended to eliminate difficulties of jurisdiction and provide for more flexible court operation to meet the needs of the whole state. States which have this type of court organization are New Jersey and Alaska; several others are moving in this direction.

B. Provision for an administrative council (composed of judges) with broad powers to change districts, create subdivisions, and alter jurisdictions. It would centralize the supervision of court business including budgets, trial terms, reassigning of judges to overburdened districts, and record keeping. States which have made recent progress in this field are Colorado, Illinois, and New Mexico. Twenty-three states have court administrative officers.

C. Method of selecting judges modeled on the "Missouri Plan" (contained in the Missouri constitution of 1945).

This is the way the Missouri Plan operates:

1. A nonpartisan judicial commission submits three names to the governor whenever a vacancy occurs. (There was some criticism of this JCC provision because lawyers had a majority on the nominating commissions.)

2. The governor appoints one nominee to fill the vacancy. (Another criticism of this provision was that the governor had no power to reject this list and call for a new one.)

3. The judge holds office for a limited specified period, such as one year.

4. Then an election, without a competing candidate, is held to see if the judge should be continued in office. If the vote is "yes," he continues. Usually there are periodic elections to give opportunity to remove an unwanted judge.

5. If the vote is "no," the appointment process is repeated.

This plan was designed to promote qualified men into judgeships and to eliminate the necessity for campaigning in the usual political manner. The Missouri Plan, or one similar, is in effect in Alaska, California, Kansas (Supreme Court Justices only), and Missouri. It is supported by the American Bar Association and the American Judicature Society.

The JCC recommendations were received without enthusiasm, and no action was taken.

The MCC Report

The Minnesota Constitutional Commission favored judicial reform within the existing constitutional framework and recommended many changes. Its 1948 report:

A. Eliminated the unified court system and retained the independent courts (supreme, district, and probate) with their strict and separate jurisdictions.

B. Provided for an administrative council with more limited powers.

C. Made some changes in judicial selection, but abandoned the principles of the Missouri Plan. Instead, it:

   1. Extended all judicial terms to six years; provided for the "Alley Plan" in which incumbents are identified on the ballot and candidates must specify against whom they are running; allowed judges appointed by the governor at least one year before having to run in an election.

   2. Set up an election plan for supreme court justices which the legislature could, but was not required to, adopt. Initial selection was through an open election with competing candidates. Subsequent retention in office was like the Missouri Plan.

Minnesota Bar Association Committee Report

This committee studied the MCC Report from 1948 to 1953, made further alterations, introduced its recommendations to the legislature in 1955, and supported the amendment which was put to the voters in 1956. The Bar Committee adopted most of the language of the MCC Report with these major differences:

A. It eliminated the administrative council after the District Judges Association in 1953 opposed it. Mr. Pirsig said, "It is regrettable that the judges should have found it necessary to object to a measure designed to expedite their work and found useful and effective in other states."

B. It removed all changes in judicial selection and proposed, instead, that all judges be "elected in the manner provided by law." In practice, most judges arrive on the bench through an appointment by the governor and have one year or more before running in an election which has the "Alley Plan" mentioned in the MCC Report. There are no specific rules about the method of appointment set out in the constitution, other than that this is the governor's duty.

Probate Court Changes

In 1954, a constitutional amendment was passed changing the jurisdiction of the probate courts and the qualification of its judges. These improvements were incorporated into the 1956 Amendment.

Provisions in the Present Article 6 which represent changes from the Old Article

1. All judges must be lawyers and all terms are increased to six years. Appointed judges have at least one year (instead of 30 days) in office before having to run in an election. Provisions for retirement and removal of judges are better.

2. Justices of the peace and court commissioners are no longer constitutional officers.

3. More freedom is given to the legislature in changing judicial districts.

4. Probate court is reorganized.

5. Supreme Court is allowed to appoint its clerk of court and law librarian. Directions as to where the Supreme Court shall meet are removed.

Criticisms of the Present Article 6

1. Not clear who has the power to make rules of practice, procedure, and evidence. Old article gave this power to the legislature. JCC recommended giving it to the supreme court; MCC left the power with the legislature. Present article is silent on this subject.

2. Clerk of district court is still elected rather than appointed.

3. Fixed minimum jurisdiction of the probate court thought by some to be a barrier to solution of reorganization of lower courts.

4. No administrative council for the courts.

5. No improvement of judicial selection.

Conclusion

Improvements in the workings of the court system have been made in the last 10 years, especially since the adoption of the new Judicial Article in 1956, e.g., judicial districts were reduced from 19 to 10 by statute. But it is true that none of the more thorough-going reforms, first suggested in Minnesota nearly 20 years ago and adopted by many of our more populous states, has made much headway here. In looking over the field of judicial reform, one must keep in mind which major plans require constitutional alterations, and which ones require legislative

action. Unification of the courts, a far-reaching change, certainly would need a constitutional amendment, if not a rewriting of the entire article. The creation of an administrative council is not prohibited by the constitution and could be put into effect by statute. As for changes in the method of selecting judges, it is the opinion of a Law School faculty member that this, too, would require an amendment to the constitution.

Statutory and Court Changes

It is, of course, in the public interest to have a system of dispensing justice which is effective, efficient, and of high quality. However, the judicial department differs from the other governmental departments which affect the citizen. The public is concerned with the end result of the judicial system, but it is not qualified to take part in the workings of the system. This is the province of a specialized professional group -- the lawyers. It is difficult, if not impossible, for lay groups to support or obtain changes in the court system which the Bar Association actively opposes, or in which it is not interested. This has been especially true of two major suggestions for improvement: unification of the courts, and the administrative council. In fact, many lawyers feel that most of the practical problems of the legal proceedings facing both the public and the profession are centered around administrative tie-ups; these problems are not ones to be solved by constitutional revision but by administrative reorganization, accomplished by the courts or by statute.

New interest in selection of judges

The remaining major proposal -- change in the method of selecting judges --- concerns the public directly as well as indirectly. Here we are qualified to have a say, because we take part in the process. And it is here that interest in improvement seems to be reviving, not only among lay groups concerned with governmental processes, but within the legal profession. The League of Women Voters may want to study more closely the various plans proposed in the past, and join with others in support of an improvement in this field.

ARTICLE 7. THE ELECTIVE FRANCHISE

Amendments to this article over the years have dealt with extending the elective franchise to all people, regardless of race or sex. The direction now is to modify residence requirements which have become restrictive as the mobility of our population has increased. The amendment adopted in 1960, which substituted a new Section 1, permits persons who have moved within 30 days of an election to vote as prescribed by the legislature. Under consideration is a plan to allow persons moving into the state less than six months before an election to vote for President and Vice President. Eight states have passed amendments to implement this idea since 1956, and the LWV has a consensus supporting action in this area.

Obsolete Provisions

Before 1960, there were three obsolete provisions in this article. The first set special criteria for the vote of Indians and was eliminated by the amendment to Section 1 adopted in 1960. One of the more conspicuous examples of obsolescence still remains -- the limited vote of women which is superseded by the 19th Amendment to the U. S. Constitution. The third obsolete provision that could be removed is the last part of Section 9 setting the procedure for the first general election after the adoption of Section 9 in 1883.

Possible needed additions

Two provisions which could be added to this article arise from changes in voting procedures since the original constitution was written. One would require a voter to be registered where a registration system is in effect, and the other would sanction the use of voting machines. Both would give constitutional protection to accepted practices in order to avoid questions of their legality. Some states have these provisions, although there is no unanimity of thought on the need or desirability of including them. The MCC suggested providing for the use of voting machines. In addition they would have specified in Section 2 that voting rights are to be revoked for conviction of a felony in Federal as well as State Court. They added hospital confinement in Section 3 to the list of institutions at which a voter could reside and not lose residence; other changes of the MCC related to eliminating obsolete provisions.

ARTICLE 8. EDUCATION AND SCHOOL FUNDS

How the Article Grew

This article, which originally consisted of four sections, now contains eight. It was included in the constitution to provide a uniform public school system, to establish and to guarantee the state school fund against waste, to prohibit using the fund for any religious sects, and to establish the University and its location. Most of the amendments which have followed refer to the investment of the school funds. The article has grown increasingly detailed over the years. In addition to being criticized for its detail, the fact that it contains provisions which dedicate funds to particular purposes exposes it to further attack.

Dedicated funds criticized

Most states face financial difficulties because their constitutions and statutes dedicate or earmark much of their state's income. Minnesota is no exception, with 79% of its income in special funds and only 21% accessible to the legislature to spend as it sees fit. (The state income tax is a statutory not constitutional dedication.) Article 8 provides for three of the constitutionally earmarked funds -- the Permanent School Fund, the Permanent University Fund, and the Swamp Land Fund. This earmarking of funds tends to give stable and predictable support to some activities of state government but makes it difficult for the legislature to determine overall needs and to spend state revenue on the basis of the greatest needs. The new Alaskan constitution states, "the proceeds of any state tax or license shall not be dedicated to any special purpose, except when required by the federal government for state participation in federal programs." Although Alaska allowed old dedications to continue, her unwillingness to sanction new ones is significant.

Recommendations from study committees

The MCC made no proposals for eliminating dedicated funds. However, when the Commission was preparing its recommendations the subcommittee on Taxation and Finance recommended a provision abolishing all constitutional and statutory dedication of current revenue and requiring that all such revenue be deposited in a general revenue fund to be disbursed in accordance with appropriations made by law. The Little Hoover Commission (1950) states that the dedication of funds encourages unsound spending for the dedicated purposes and results in "feast and famine spending." It concluded that the legislature should make provisions for discontinuing the present dedication of funds and prevent further dedications. Obviously this is a politically difficult step to accomplish. The interest earned from investment of these three funds, as well as the money which formerly

went to enlarging the principal, is spent almost entirely for educational purposes. A very effective school lobby operates at the legislature and they would certainly oppose the loss of this income for the schools. It is questionable whether Minnesotans generally would be prepared to disturb this income for schools.

Other recommendations

The final MCC recommendations for this article involved reducing its length to five sections, eliminating the phrase "public schools in each township of the state" (township no longer constitutes a unit of school administration in Minnesota), including a consolidated section on public lands by combining Sections 3 and 8 with Section 32 of Article 4 (relating to the internal improvement lands and their investment), allowing the costs of administration to be deducted from the various funds' income before distributing it, and suggesting that the article be reduced in its detail.

Proposed 1962 Amendment

Proposed Amendment No. 1, to be voted on in November, 1962, would principally: (1) combine the Permanent School Fund and Swamp Land Fund into one fund, (2) change the consolidated fund's investment possibilities with the hope of increasing its income, (3) deduct administration costs from the fund's income before distributing it, (4) allow stocks and bonds to be sold at less than cost with subsequently earned interest repaying these losses to the principal. (For more information on Amendment No. 1 see the Minnesota LWV's study on the Proposed Amendments of 1962.)

ARTICLE 9. FINANCES OF THE STATE

In 1921 Professor William Anderson described this article as the most unsatisfactory one of the constitution. Certainly its 22 amendments have made it the most frequently amended article. The subject of state finances appears not only here but in sections of Articles 4, 8, 16, 17, 18, 19, and 20.

Problems of the Article

Whether or not the state can carry on its wide range of services and activities depends to a great extent on this article. Since the state has all the powers not given to the federal government, the article's chief purpose is to limit the state's powers. Many states, and Minnesota is one of these, have placed prohibitions and limitations in this article which interfere with the state's ability to carry out the duties required by other articles as well as by laws passed in the legislature. For example, the current state building program, which was approved by the legislature, may not proceed until a constitutional amendment removes this article's present debt ceiling. In the 1800s abuse of state credit by legislatures led to detailed clauses restricting the legislators' powers over state finances. This trend made for much less flexibility, and state governments have had difficulty in adapting to changing economic and social conditions. During the depression years the federal government moved in to act when the states, shackled by their constitutions' finance provisions, seemed unable to meet new needs. Another consequence of detailed financial provisions is that doubts over their interpretation result in many questions of finance being settled by the courts rather than by the legislature.

Types of Limitations Imposed

In Minnesota's finance article are found four different kinds of limitations that were either written in originally or added by subsequent amendments. The first type of limitation, earmarking of funds, is found in Section 1A. Revenues from the occupation tax are designated for three different uses: general revenue,

the elementary and secondary schools, and the university. In the period from 1949 to 1958 some of this revenue was diverted to a Veterans Compensation Fund. (Constitutional earmarking often leads to temporary earmarking and these obsolete provisions remain to lengthen and clutter constitutions.) Section 5 earmarks revenues from gasoline taxes for two road funds. Because the constitution allowed very little debt (Section 5) constitutional exceptions to the low debt ceiling were made to allow credit for special purposes. Section 10 originally provided bonds to help finance railroads; later, when the railroad debt proved disastrous, a special provision forbade further issue of the bonds. Section 14 bypassed the debt restrictions to allow bonds to be sold for the building of state institutions.

The second type of constitutional limitation involves provisions for special kinds of tax levies. Many states added these during the 19th century to increase taxes on the newly emerging large corporations. Since they were uncertain they had this power, states added amendments specifying they could levy these special taxes. Examples of this are the occupation tax, originally adopted in 1922, on the mining industry in Section 1A and the gross earnings tax on railroads in Article 4, Section 32, and mentioned also in Article 9, Section 1.

Exemptions from taxation, as listed in Section 1, is another limitation. Frank Landers, in Graves State Constitutional Revision, believes the subject of constitutional tax exemptions needs review.

Finally, our debt limitations are another restriction to legislative action. Whether their purpose -- to prevent legislators from mortgaging the future -- was achieved is controversial, since the $250,000 limit has been circumvented and the debt in 1961 is almost $200 million. Other Minnesota debt provisions allow for unlimited borrowing for certain restricted purposes (war, invasion, or insurrection) and prohibit lending the state's credit for the benefit of individuals or corporations (but then allow exceptions to this in the same Section 10). Proposed constitutional Amendment No. 2, to be voted on in November 1962, would greatly liberalize these provisions. Unfortunately it goes only part way in lessening these sections' detail. (For more information see the Minnesota LWV's study of the Proposed Amendments of 1962.)

Another limitation often found in state constitutions prohibits or limits levying special taxes. This has not appeared in our constitution. The proposed taconite amendment, which would specify that no special tax against mining companies could be levied, is an example of this kind of limitation.

MCC Recommendations for Article 9

The Commission retained Section 1 with its broad tax provisions to meet changing financial conditions. This section, amended in the past, has proven its worth. The MCC created a new section for exemptions from taxation, believing these need to be more clearly stated and strengthened. It retained the occupation tax, dedicated funds and all, and added a taconite amendment which provided that changes made in the rates or methods of taxing taconite must receive a two-thirds vote of each house of the legislature. It wrote a liberalized and greatly abbreviated debt section. It labeled as most important introduction of a post-auditor appointed by and responsible to the legislature to check on the executive's spending of appropriated funds. It deleted Sections 6, 7, 8, 10, 11, 12, 14A, 14B, 15, and 16 and most of Section 13, noting that most of these banking provisions are obsolete. None of these recommendations has become an amendment.

Little Hoover Report

Unlike the MCC, the authors of this report recommended that the legislature take steps to discontinue the present dedication of funds.

Finance Articles of Other States

Although comparing one state's constitution with another can be hazardous due to varying historical experiences and differences in current and prospective needs, it is interesting to see what is included in Alaska's (1956) constitution. Section 1: the state may not suspend its taxing power; Section 2: no discrimination on taxation of non-resident citizens; Section 3: appraisal standards to be set by law; Section 4: property exemptions from taxation; Section 5: taxation of government property; Section 6: taxes and public credit to be used for public purposes; Section 7: restriction on dedicated funds; Section 8: state debt provisions; Section 9: local debt provisions; Section 10: interim borrowing in anticipation of revenues; Section 11: exceptions to former debt provisions; Section 12: executive budget; Section 13: expenditures must be appropriated by law; Section 14: legislative appointed post-auditor. The article is concise and simply stated.

Evaluation

In deciding how much revision Minnesota's Taxation and Finance Article needs, pertinent questions include: Is it simple and flexible or has it too many restrictions and limitations? Does it allow legislators to make important tax and fiscal decisions? Does it facilitate sound budgeting procedures, fiscal planning, and accountability? Is it limited to matters of basic, long-term significance?

ARTICLE 10. OF CORPORATIONS HAVING NO BANKING PRIVILEGES

The MCC suggested deleting this entire article on the grounds that corporations (Section 1) are a well accepted legal concept, that Section 2 is a duplication of Article 4, Section 33, that Section 3 is unnecessary since the legislature already has these powers, and that Section 4 is covered in Article 1, Section 13.

ARTICLE 11. LOCAL GOVERNMENT

"Home Rule" Amendment becomes Local Government Article

Minnesota has a brand new Local Government Article. The voters on November 4, 1958, adopted a constitutional amendment which completely revised this article. The LWV supported the amendment because it strengthened home rule by providing: 1) realistic restrictions on special legislation by the legislature, and 2) broader provisions for adoption and amendment of home rule charters. The amendment further met our standard of a basic constitutional framework for home rule because it leaves the legislature free to work out details such as the percentages required for local approval, methods of adopting and amending charters, and the qualifications and methods of selecting charter commission members.

Degrees of Home Rule

State governments create local governments and, through constitutional and statutory provisions, grant the local communities varying amounts of local autonomy or home rule. In states which have gone the farthest in the direction of home rule, the state governments have not given up their supremacy in matters of statewide concern but allow the communities, through home rule charters, to do whatever is not prohibited or restricted by general state law.

The 1956 Municipal Year Book lists four systems of home rule. (There are 29 "home rule" states at the present time.) Minnesota has the system which is called the "mandatory" constitutional provision. This provision asserts that home rule is granted and requires the legislature to provide the implementing procedural statutes. This means that local governments may adopt a form of home rule by following the procedures that the legislature prescribes by law.

Aims of the Article

In general, the new article accomplishes three things: 1) it greatly facilitates the use by local governments of the charter process, 2) it may make the abuse of special laws by the legislature less likely by requiring local consent and the designation of the affected communities by name, 3) it allows for the organization of city-counties and for city-county consolidation through local action.

Provisions of the Article

Section 1. The legislature may provide by law for the creation, organization, administration, consolidation, division and dissolution of local governmental units.

Section 2. The legislature may pass special laws that apply to a single local governmental unit or to a group of such units, but it shall name the unit.

Before a special law goes into effect, it must have local approval. The legislature decides whether the governing body or the voters of the affected area shall give this approval and what majority vote shall be required. The legislature may dispense with local approval in some particular special laws, but this must be provided for as a general policy by a general law.

A special law may be amended or superseded by a home rule charter applying to the same unit.

Section 3. Any city or village or county or other governmental unit may adopt a home rule charter. The charter, to become effective, must be approved by the voters, but the details concerning such majority are left to the legislature.

If a charter provides for the consolidation or separation of a city and a county, 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 right to adopt charters has been extended to counties and townships.)

Section 4. The legislature shall provide for charter commissions, and shall provide for appointment of the commission members.

Amendments to the charter may be proposed by a charter commission or by petition of 5% of the voters of the local governmental unit, and must be adopted by such majority as the legislature requires by law.

A local government may repeal its home rule charter and adopt a statutory form of government.

Section 5. Existing charters and laws shall remain until amended or repealed.

The Proof of the Pudding

Is our new article a success? Authorities agree it is too soon to make any final judgment. As noted before, our "mandatory" constitutional provisions require implementing legislation. In both the 1959 and 1961 legislative sessions laws prescribing procedures were passed. These had to do with the votes needed to adopt and amend home rule charters, who may initiate amendments to charters, procedures for publication of charters, and funds for charter commissions. Other sessions must tackle procedures for county charters, optimal government forms for counties, and the general subject of special laws and local consent. (Section 2)

How will these laws affect local governments? Minnesota is presently in a period of flux and indecision. Both local units and legislators seem to be in doubt as to where to draw the bounds of the newly-granted permissiveness. Will the new laws restrict or facilitate local home rule? Can local approval be overdone as in instances like the Metropolitan Sanitary District bill where the general good can be stalemated by the requirement that each local government involved must approve all provisions of the law?

In the areas of special laws, naming the local government is a great improvement. It aids local officials in finding the laws which apply to their own local unit. It was hoped that by requiring local consent the number of special laws would be greatly reduced. Unfortunately, there still are a great many. A constitutional restriction might be added prohibiting special laws on specific subjects. No serious proposals for altering constitutional provisions have appeared to date. Concern currently is focused on more implementing legislation and how helpful these laws will prove to local governments.

ARTICLE 12. MILITIA

This article makes no guarantee of the rights of conscientious objectors (which could properly be in the Bill of Rights). Professor Anderson notes that although it is a brief and flexible article, there is no guarantee of the right of the militia to choose its own officers. The MCC recommends no change, but this article is not found in the Model Constitution. Probably this matter could be left to statutory law.

ARTICLE 13. IMPEACHMENT

This article is treated previously in Article 4, Section 14. Seemingly the subject could be covered there. The article has never been amended. The MCC's only recommendation was to include the lieutenant governor in Section 1.

ARTICLE 14. AMENDMENT AND CONVENTION

Summary of the Three Sections

Section 1 of this article relating to the amending process has been discussed in a recent LWV publication, Doorway to Change. Sections 2 and 3 refer to the calling of a constitutional convention and the ratification of a new constitution. Section 3, submitted as an amendment in 1954 and wholeheartedly supported by the League, filled a gap pointed out by the MCC in 1948.

Constitutional Convention Provisions

The extraordinary majorities required in Section 2, both for the legislative proposal of a convention and for the ratification by the people, make the calling of a constitutional convention a virtual impossibility in Minnesota. Suggestions for change by the MCC and by the LWV have been (1) that the majority requirement for ratification be changed from a majority of those voting in the election to a majority of those voting on the question, and (2) that a provision be added which would automatically require the legislature to submit to the people, at regular intervals, the question of calling a convention. This is included in the constitutions of Iowa, Michigan, Missouri, and New York. The League has supported this provision since 1951.

Initiative and Referendum

In 13 other states provision is made for the initiative, an alternate way of proposing amendments to the constitution. A percentage of voters in the state may have an amendment put directly on the ballot without going through the legislature. This provision can be included in the article on amending, or it can be a separate article, or it can be in an article on miscellaneous subjects if its scope is broadened to allow for initiating legislation and for referendum of a legislative matter to the people. Proposed amendments allowing the initiative and referendum were defeated by the voters in 1914 and 1916. Whether or not Minnesota's constitution should include provisions for the initiative and/or referendum would be a subject of further study if League members desired. Although no longer considered a cure-all reform, the initiative has provided citizens of other states a final recourse to legislation denied by lawmakers (e.g., reapportionment in Oregon and Washington).

ARTICLE 15. MISCELLANEOUS SUBJECTS

Sections 1 and 5 are in the constitution as a result of a political fight at the time of framing and were meant to guarantee one faction the benefit of railroad land grants. The MCC proposed a shortened Section 1 (concerning the SEAT OF GOVERNMENT); it noted that the federal land grant for the capital has long since been disposed of, and that if the capital were moved the legislature should be able to dispose of the land and buildings. The MCC called Section 2 (RESIDENCE ON INDIAN LANDS) obsolete and recommended its deletion. The Commission believed Section 3 (UNIFORM OATH AT ELECTIONS) should be a statutory matter. Changes recommended by the MCC in Section 4 (STATE SEAL) are based on its suggestions for the future elimination of the office of secretary of state (short ballot) and for giving the responsibility for the Great Seal to the legislature. Section 5 (STATE PRISON LOCATION) is now obsolete as the state prison moved from Stillwater to Bayport many years ago.

ARTICLE 16. PUBLIC HIGHWAY SYSTEM

This article, added to the constitution in 1920, was a completely new addition. (Amendments usually supplement or change existing articles.) It was added to make a complete network of thoroughfares of the state highways and to insure the location of these routes. In 1956 the article was amended to delete the specific descriptions of the 70 trunk highways; this reduced the wording of the constitution by 25% but nevertheless left the article extremely detailed. The 1956 amendment created four funds. The highway user tax distribution fund was the major one. Its income was to go to the other three -- the trunk highway, the county state-aid, the municipal state-aid -- and was to be distributed according to formula. A ceiling of 150 million dollars on bonds issued for highway building with a 20 years amortization period and an interest rate no higher than 5% were specified.

1956 Amendment vs. the 1948 MCC Recommendations

The 1956 amendment followed only a few of the earlier MCC recomendations. It did remove the naming of routes, and it gave the state more supervision and control over highways. Some flexibility in routing was allowed.

It did not follow the MCC suggestions in many other ways. While the MCC combined funds to create one highway fund, the amendment provided four. The MCC suggested a legislative appointed commission to study the trunk highway system to make recommendations to the legislature on routes, which the amendment ignored. No limitations were placed by the MCC on bonds to be sold and the MCC would have had legislators follow the revised debt provisions in Article 9 in incurring debt for highways. Generally the MCC would have left many more decisions to the legislature, and this was reflected in the Commission's greatly abbreviated article.

Section 13's provision that any provisions of the constitution inconsistent with the things authorized in Amendment 16 are repealed, etc., was written into this article when it was first adopted in 1920. Apparently it refers to certain additions the article made which were inconsistent with other articles, e.g., the state's engaging in "works of internal improvement" contrary to Article 9, Section 5 (formerly roads were the counties' responsibility); taxing motor vehicles more heavily than other personal property; and creating a large exception to the state debt limit. Dr. Wm. Anderson in his history of the constitution describes Section 13 as unusual and is interested to see how the courts construe it.

ARTICLE 17. FOREST FIRES: PREVENTION, ABATEMENT

ARTICLE 18. FORESTATION AND REFORESTATION

ARTICLE 19. AERONAUTICS

ARTICLE 20. VETERANS BONUS

All of these articles added by amendment to the original constitution. Like the Highway Article, they each contain a section repealing other provisions of the constitution which might prohibit carrying out "the doing of things" authorized in each amendment. No supreme court ruling has been made on these "repealer" sections, but the practice of repealing without designation which section is repealed is certainly a questionable one. An attorney general's opinion states that if an amendment can be construed as repealing more than one article, voters should be allowed to vote separately on the portions repealed. Most likely the legislature's fear was that these articles conflict with the debt ceiling and the provision the "state shall not contract any debts for works of internal improvement" in Article 9, Section 5. The MCC suggested removing these "repealers" as unnecessary.

Article 17, adopted in 1924, allows the legislature to contract debts for forest fire prevention.

Article 18, adopted in 1926, encourages the development of forests and authorizes a special tax for such purposes. The MCC reworded Section 1. Since the state has the power to tax, it seems this article could be statutory law.

Article 19, adopted in 1944, allows the state to construct and operate airports, allows taxation of aircraft, airports, and aircraft fuel, and permits the state to go into debt in order to perform these services. The MCC did not change more than the wording due to the recent adoption of the amendment.

Article 20, adopted in 1948, is now obsolete since its specified purpose has been fulfilled and its debt obligations met.

The Schedule of the Constitution was intended to provide for the transition of Minnesota from territorial status to statehood, to provide for a popular vote on the proposed constitution of 1857, and to place it in operation when adopted. Now it is largely of historical interest. Authorities suggest removing the Schedule after the constitution has been in effect a short time.

OTHER POSSIBLE ARTICLES

Public Welfare

There is a division of opinion on whether this subject should be included in a constitution. The Little Hoover Commission's welfare recommendations were all to be achieved by statutory law. The new constitutions of Alaska and Hawaii do not have a Welfare Article. Their authors believed that the subject is better handled by legislative action. However, the 1948 Model Constitution includes an article which is a general framework of constitutional powers and guarantees to the state ample authority to establish and maintain a program covering education, health, relief, public housing, fair employment practices, conservation, and inspection of institutions and agencies. Authorities who disagree with these inclusions believe states have adequate authority to provide welfare services; once powers are enumerated in constitutions the courts construe (or interpret) them to imply restrictions on powers not enumerated.

Intergovernmental Relations

To date no state constitution has such an article, but authorities believe that with the growing need for intergovernmental undertakings, such an article could ease cooperation between governments and the constitutionality of such cooperation could not be questioned as it has been in a number of states. So far states including provisions on the subject have not written them into separate articles, e.g. in the Missouri and Florida constitutions. The 1948 Model Constitution has a four-section article on this subject.

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