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Preliminary Memo

January 18, 1968

B. G. P.

TO: ¹ House Judiciary Subcommittee on Court Reform and Judicial Selection,

FROM: Thomas G. Clifford, House Research Consultant

SUBJECT: ² Judicial Selection: The Missouri System /by Thomas G. Clifford.

The attached materials describe the Missouri Non-partisan Court Plan which has been in effect in that state since 1940.¹ Since that year the Plan has been adopted in form in at least ten other states. This Plan is characterized by four elements² as set forth below:

1. The nomination of a panel of judicial candidates by a non-partisan commission composed of conscientious laymen and lawyers.
2. The limitation on the executive to appoint judges only from the panel submitted by the commission.³
3. The review of the appointment by the voters after a short probationary term of service in which the only question is whether the judge's record warrants his retention in office.

¹Constitution of the State of Missouri, Article V, Section 29a-29g.

²As stated in "A Better Way to Select Judges," S. I. Rosenman.

³See Missouri Constitution, Article V, Section 29d, attached.

Judiciary

4. Periodic review of the appointment at the end of each term of office by the voters in which the only question is whether the judge's record warrants his continued retention in office.

Judge Rosenman concludes that the Missouri System is the best system of judicial selection⁴ now in effect but finds fault with the requirement that each judge run in a popular election every four years.⁵ A system similar to the Missouri Plan has been implemented in New York City and is thought to be working well.⁶

A number of other publications are on file in this office which describe the Missouri Plan in detail and endorse its concept.

⁴Ibid, p. 9

⁵unnecessary due to public apathy and lack of information.

⁶Rosenman, p. 13.

MISSOURI NONPARTISAN COURT PLAN

The nonpartisan court plan, commonly referred to as "the Missouri Court Plan", found in Article V, Section 19 of the Missouri Constitution, was derived from a plan sponsored by the American Judicature Society and the American Bar Association and plan was adopted by the state of Missouri as a result of initiative petitions on November 5, 1940.

Under the provisions of the nonpartisan court plan, whenever a vacancy occurs in an office of judge in the Supreme Court, the courts of appeals, the circuit and probate courts within the city of St. Louis and Jackson County, and the St. Louis courts of criminal jurisdiction, the nominees are selected by a nonpartisan judicial commission consisting of an equal number of lawyers and laymen meeting with the presiding judge of the appellate court. Lawyer members are elected by lawyers by secret ballot, and the lay members are appointed by the Governor. They serve six-year, staggered terms, and a member cannot hold any public office or a political party position during his term on the commission.

After the commission selects the three nominees, they present their names to the Governor. The Governor appoints one of the three nominees as judge for a trial period of at least twelve months and until the next general election, when the voters by a separate judicial ballot decide whether he shall be retained as a judge for a full term.

trial period

At the end of each term, the judge must be voted upon again for an additional term. The ballot reads:

"Shall Judge _____ be retained?
Yes _____ No _____"

A judge who fails to obtain a majority vote is automatically retired and a new judge is selected by the nonpartisan method. Thus a judge who has lost the public confidence can be removed from office by the vote of the people by the judicial ballot.

*See
the
law*

The Missouri Bar Association conducts a secret ballot among all the lawyers in the judge's district, who vote on the question of whether the judge should be retained in office for another term. The results of this lawyers' election are published prior to the election so that the general public will know before the election how the lawyers regard the judge.

The Missouri Constitution provides judges under the nonpartisan court plan. This commission is nonpartisan, and its members are elected in a nonpartisan manner.

The Constitution, Article V, Section 20(b), permits any other judicial circuit to adopt by a majority vote the provisions of the independent court plan for the judges of the courts of record in that circuit.

Some or all portions of the "Missouri Court Plan" have been adopted in eleven other states, and several states now have proposals before them to adopt it.

§ 1. The judge retired because of disability under the provisions of section 20(a) shall hold and enjoy the same rank, precedence, honor and emolument as if he had continued in office until the expiration of his term of office.

Section 23. Juvenile and domestic relations divisions of circuit courts.—In judicial circuits of more than one judge there shall be at least one juvenile and domestic relations division of the court, and in the selection of judges of the circuit one judge shall be selected for the division, in addition to his other duties.

NON-PARTY SELECTION OF JUDGES

Section 20(a). Courts subject to plan—appointments to fill vacancies.—Whenever a vacancy shall occur in the office of judge of any of the following courts of this state, to wit: The supreme court, the courts of appeals, the circuit and probate courts within the city of St. Louis and Jackson county, and the St. Louis courts of criminal correction, the governor shall fill such vacancies by appointing one of three persons possessing the qualifications for such office, who shall be nominated and whose names shall be submitted to the governor by a nonpartisan judicial commission established and organized as hereinafter provided.

Source: Const. of 1875, Amdt. of 1910, 11.

Section 20(b). Adoption of plan in other circuits.—At any general election the qualified voters of any judicial circuit outside of the city of St. Louis and Jackson county, may by a majority of those voting on the question elect to have the judges of the courts of record therein appointed by the governor in the manner provided for the appointment of judges to the courts designated in section 20(a). The general assembly may provide the manner in which the question shall be submitted to the voters.

Source: Const. of 1875, Amdt. of 1910, 12.
See also notes, see Vol. III, RSMO 1919

Section 20(c)(1). Tenure of judges—declarations of candidacy—form of judicial ballot—rejection and retention.—Each judge appointed pursuant to the provisions of sections 20(a)-(g) shall hold office for a term ending December 31st following the next general election after the expiration of twelve months in the office. Any judge holding office, or

elected thereto, at the time of the election by which the provisions of sections 20(a)-(g) become applicable to his office, shall, unless removed for cause, remain in office for the term to which he would have been entitled had the provisions of sections 20(a)-(g) not become applicable to his office. Not less than sixty days prior to the holding of the general election next preceding the expiration of his term of office, any judge whose office is subject to the provisions of sections 20(a)-(g) may file in the office of the secretary of state a declaration of candidacy for election to succeed himself. If a declaration is not so filed by any judge, the vacancy resulting from the expiration of his term of office shall be filled by appointment as herein provided. If such a declaration is filed, his name shall be submitted at said next general election to the voters eligible to vote within the geographic jurisdictional limit of his court, or circuit if his office is that of circuit judge, on a separate judicial ballot, without party designation, reading:

"Small Judge

(Here the name of the judge shall be inserted)

of the

(Here the title of the court shall be inserted)

Court be retained in office? Yes No."
(Scratch one)

If a majority of those voting on the question vote against retaining him in office, upon the expiration of his term of office, a vacancy shall exist which shall be filled by appointment as provided in section 20(a); otherwise, said judge shall, unless removed for cause, remain in office for the number of years after December 31st following such election as is provided for the full term of such office, and at the expiration of each such term shall be eligible for retention in office by election in the manner here prescribed.

Source: Const. of 1875, Amdt. of 1910, 13.

Section 20(c)(2). Certification of names upon declarations—law applicable to elections.—Whenever a declaration of candidacy for election to succeed himself is filed by any judge under the provisions of this section, the secretary of state shall not less than thirty days before the election certify the name of said judge and the official title of his office to

the clerks of the county courts, and to the boards of election commissioners in counties or cities having such boards, or to such other officials as may hereafter be provided by law, of all counties and cities wherein the question of retention of such judge in office is to be submitted to the voters, and, until legislation shall be expressly provided otherwise therefor, the judicial ballots required by this section shall be prepared, printed, published and distributed, and the election upon the question of retention of such judge in office shall be conducted and the votes counted, canvassed, returned, certified and proclaimed by such public officials in such manner as is now provided by the statutory law governing voting upon measures proposed by the initiative.

Source: Const. of 1875, Amend. of 1910, 12a.

Section 25(d). Nonpartisan judicial commissions—number, qualification, selection and terms of members—majority rule—reimbursement of expenses—rules of supreme court.—Nonpartisan judicial commissions whose duty it shall be to nominate and submit to the governor names of persons for appointment as provided by sections 20(a)-(g) are hereby established and shall be organized on the following basis: For vacancies in the office of judge of the supreme court or of any court of appeals, there shall be one such commission, to be known as "The Appellate Judicial Commission"; for vacancies in the office of judge of any other court of record subject to the provisions of section 20(a)-(g), there shall be one such commission, to be known as "The Circuit Judicial Commission," for each judicial circuit which shall be subject to the provisions of section 20(a)-(g); the appellate judicial commission shall consist of seven members, one of whom shall be the chief justice of the supreme court, who shall act as chairman, and the remaining six members shall be chosen in the following manner: The members of the bar of this state residing in each court of appeals district shall elect one of their number to serve as a member of said commission, and the governor shall appoint one citizen, not a member of the bar, from among the residents of each court of appeals district, to serve as a member of said commission; each circuit judicial

commission shall consist of five members, one of whom shall be the presiding judge of the court of appeals of the district within which the judicial circuit of such commission or the major portion of the population of said circuit is situated, who shall act as chairman, and the remaining four members shall be chosen in the following manner: The members of the bar of this state residing in the judicial circuit of such commission shall elect two of their number to serve as members of said commission, and the governor shall appoint two citizens, not members of the bar, from among the residents of said judicial circuit, to serve as members of said commission; the terms of office of the members of such commissions shall be fixed by the supreme court and may be changed from time to time, but not so as to shorten or lengthen the term of any member then in office. No member of any such commission other than the chairman shall hold any public office, and no member shall hold any official position in a political party. Every such commission may act only by the concurrence of a majority of its members. The members of such commissions shall receive no salary or other compensation for their services as such, but they shall receive their necessary traveling and other expenses incurred while actually engaged in the discharge of their official duties. All such commissions shall be administered, and all elections provided for under this section shall be held and regulated, under such rules as the supreme court shall promulgate.

Source: Const. of 1875, Amend. of 1910, 12.

Section 25(e). Payment of expenses.—All expenses incurred in administering sections 20(a)-(g), when approved by the supreme court, shall be paid out of the state treasury. The supreme court shall certify such expense to the state auditor, who shall draw his warrant therefor payable out of funds not otherwise appropriated.

Source: Const. of 1875, Amend. of 1910, 12.

Section 25(f). Prohibition of political activity by judges.—No judge of any court of record in this state, appointed to or retained in office in the manner prescribed in sections 20(a)-(g), shall directly or indirectly make any contribution to or

hold any office in a political party or organization, or take part in any political campaign.

Source: Const. of 1875, Amdt. of 1910, 16.

Section 28(g). Self-enforceability.—All of the provisions of sections 29(a)-(g) shall be self-enforcing except those as to which action by the general assembly may be required.

Source: Const. of 1875, Amdt. of 1910, 17.

ARTICLE VI

LOCAL GOVERNMENT

Section 1. Recognition of existing counties.—The existing counties are hereby recognized as legal subdivisions of the state.

Source: Const. of 1875, Art. IX, 41.

For case notes, see Vol. III BSMo 1919

Section 2. Continuation of existing organization of counties.—The existing organization of counties shall continue until further provisions applicable thereto shall be provided, as authorized in this constitution.

For case notes, see Vol. III BSMo 1919

Section 3. Consolidation of counties—allocation of liabilities.—Two or more counties may be consolidated by vote of a majority of the qualified electors voting thereon in each county affected, but no such vote shall be taken more than once in five years. The former areas shall be held responsible for their respective outstanding liabilities as provided by law.

Section 4. Division or diminution of counties.—No county shall be divided or have any portion severed therefrom except by vote of a majority of the qualified electors voting thereon in each county affected.

Source: Const. of 1875, Art. IX, 42, 4.

For case notes, see Vol. III BSMo 1919

Section 5. Dissolution of counties—annexation.—A county may be dissolved by vote of two-thirds of the qualified electors of the county voting thereon, and what so dissolved all or portions thereof may be annexed to the adjoining county or counties as provided by law.

Section 6. Removal of county seats.—No county seat shall be removed except

by vote of two-thirds of the qualified electors of the county voting thereon at a general election, but no such vote shall be taken more than once in five years.

Source: Const. of 1875, Art. IX, 42.

For case notes, see Vol. III BSMo 1919

Section 7. County courts—number of members—powers and duties.—In each county not framing and adopting its own charter or adopting an alternative form of county government, there shall be elected a county court of three members which shall manage all county business as prescribed by law, and keep an accurate record of its proceedings. The voters of any county may reduce the number of members to one or two as provided by law.

Source: Const. of 1875, Art. VI, 13a.

For case notes, see Vol. III BSMo 1919

Section 8. Classification of counties—uniform laws.—Provision shall be made by general laws for the organization and classification of counties except as provided in this constitution. The number of classes shall not exceed four, and the organization and powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions. A law applicable to any county shall apply to all counties in the class to which such county belongs.

(1922) Land Tax Collection Law is not a local or special law prohibited by 503, Art. III, of the constitution nor does it violate 16, Art. VI relating to classification of counties. *Collector v. Director of Land*, 202 Mo. 1001, 217 S. W. (2d) 52.

For prior cases, see Vol. III BSMo 1919

Section 9. Alternative forms of county government.—Alternative forms of county government for the counties of any particular class and the method of adoption thereof may be provided by law.

Section 10. Terms of city and county offices.—The terms of city or county offices shall not exceed four years.

Source: Const. of 1875, Art. IX, 21c.

For case notes, see Vol. III BSMo 1919

Section 11. Compensation of county officers—uniform laws—assessment of fees and salaries.—Except in counties which frame, adopt and amend a charter for their own government, the compensation of all county officers shall be prescribed by law uniform in operation in

Restricting

Case system of judicial review

Tenure

2^d Interned. ct of appeals system

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