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A HISTORY OF THE CONSTITUTION
OF MINNESOTA

WITH THE FIRST VERIFIED TEXT

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prevent indifferent voters from entirely ignoring or even throwing away their amendment ballots. The legislature could then further enact that all such ballots had been cast for the amendments unless the voter had, in some distinct way, marked a negative upon them. In order to be entirely fair to the voter, the legislature might even go so far as to have a warning notice printed at the head of the ballot, informing the voter of the effect of his not marking any choice upon the amendments, but this would probably not be necessary to establish the constitutionality of such an enactment. The special reason for believing that this plan would be constitutional lies in the fact that the section in question says that "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."²² In the past the law has been that a failure to vote should be counted as a negative vote; there is but little reason why, in the future, the legislature could not provide that a failure to vote, under the conditions specified above, should count as an affirmative vote.

In concluding his discussion of the various methods of amending state constitutions, Professor Dodd says: "Of the methods of popular ratification most employed—(1) by a majority of those voting on the measure, even though it be a minority of those voting on other matters at the same time, (2) by a majority of those voting at the election when the proposal is submitted—the second has proven practically unworkable, without schemes for the counting of votes which practically nullify it; the first, on the other hand, often permits constitutional alterations by a small minority of the electors, and is objectionable for this reason. It is a question whether the second plan, aided by party endorsements or by the Alabama method of voting, is not better than final action by a minority. Under the Alabama plan an elector votes for an amendment unless he is definitely opposed to it; he is presumed to be for it rather than against it if he does nothing."²³

5. THE COURTS AND THE ADOPTION OF AMENDMENTS. One of the interesting facts about the amending process is that the determination of the state canvassing board as to whether an amendment has been adopted or rejected is not necessarily final. It has been held that "whether a constitutional amendment has been properly adopted according to the requirements of an existing constitution is a judicial question."²⁴ In the determination of such questions "the controlling presumption" is in favor of the statement and

²² *Minn. Const.*, art. 14, sec. 1. Italics mine. Constitutional amendments are today submitted to the voters on separate pink ballots. *Gen. Stat.* 1913, sec. 318.

²³ Dodd, *op. cit.*, p. 198.

²⁴ *McConaughy v. Secretary of State*, 106 *Minn.* 392, 409; 119 *N. W.* 408, (1909).

certificate of the state canvassing board. "In a collateral proceeding this certificate is conclusive, . . . and in a direct attack it can be overthrown only by very clear and satisfactory evidence."²⁵ The burden is upon the contestant. Any legal voter may institute a contest in a state district court, serving notice at the same time upon the secretary of state.²⁶ There is provision for the inspection and recounting of ballots, also, although the almost insuperable difficulty in recounting the vote of the entire state must be evident to all.²⁷ Nevertheless, such a recount was proposed in the case of the prohibition amendment in 1918 and might have been carried out had not the success of the national prohibition amendment been so fully assured at the time as to make the state amendment unnecessary. A very interesting contest, with unique results, followed the election of 1906. In that election there were submitted to the voters, among other propositions, the so-called "wide open tax amendment," and a new road and bridge fund amendment.²⁸ On the ballots the tax amendment was number 2, and the road amendment number 1. On the tally sheets and in the tally books, however, this numbering was reversed. When the ballots were canvassed, the state canvassing board assumed that this error had not resulted in any material error in the returns. The total vote having been 284,366, the required majority for adoption of any amendment was 142,184. Upon this basis the tax amendment was declared adopted with a vote of 156,051, and the road amendment lost with a vote of 141,870.²⁹ Two contests were immediately instituted in the St. Louis county district court. One of the contestants aimed to overthrow the tax amendment which the canvassing board had declared adopted; the other wished to have the road amendment declared adopted. Both came on for trial before the same judge. A recount of the ballots was begun. Some ballots were counted from all but two counties, and in all nearly half of the vote of the state was counted. However, this represented only 654 of the 2,670 election districts of the state, making it evident that the larger districts were the ones first inspected. In 71 districts the ballots had been destroyed; no effort was made to recount the votes in 1,945 precincts. It was evident from the recount that the error in printing the tally sheets and books had resulted in a considerable number of errors in counting the votes. On the other hand, there was no uniformity of error. In some precincts there was no error; in some the road amendment gained as a result of the recount, and in others the tax amendment gained. There was only what might be called an "average error," or a general tendency to error, in favor of the tax amendment and against the road amendment. So great was this average error that had it continued

²⁵ *Ibid.*, pp. 427-28.

²⁶ *R. L.* 1905, sec. 336; *Sess. Laws* 1911, ch. 59; *Gen. Stat.* 1913, sec. 529.

²⁷ *Gen. Stat.* 1913, sec. 530.

²⁸ *Sess. Laws* 1905, ch. 168, 212. See pp. 189-90, 193, 240, 246-47 for further discussion and for the texts of the amendments.

²⁹ *Leg. Man.* 1907, p. 489.

throughout the whole state as it did in the 654 districts the votes from which were recounted, the tax amendment would have been proved defeated, and the road amendment carried. Not only that, but assuming even that the returns from the 2,016 precincts not recounted were entirely correct, and adding to them the corrected returns from the 654 recounted, the tax amendment would still be defeated and the road amendment adopted. Assuming this to be a sufficient proof, the district judge declared that the tax amendment had been defeated and the road amendment carried, and he entered judgments accordingly.³⁰ At this point there should have been an appeal by the state to the supreme court from both decisions. Such appeals were entered by the attorney general, but the one relating to the road amendment was later dismissed by him.³¹ This left the decision of the district court final in this case, and the road amendment was declared by the secretary of state to be a part of the constitution. The other appeal was prosecuted to judgment.³² The supreme court refused to accept the theory of average error and insisted that the contestant had not proved his point. The decision of the district court as to the tax amendment was, therefore, reversed, and the tax amendment was also declared carried.

6. THE INCREASING LENGTH OF THE CONSTITUTION. It is a matter of familiar observation that the tendency is for state constitutions to grow longer. This process of lengthening is usually accelerated when a state draws up a new constitution, but it goes steadily on, also, as legislative amendments are added, one after another, to the original document. Minnesota is no exception to the rule. Only one amendment has really had the effect of shortening the constitution, the tax amendment of 1906.³³ Article 4 has been increased by the addition of nearly four pages of new material; articles 1, 7, 8, and 9 have all been lengthened. The trunk highways amendment of 1920, embodying the so-called "Babcock plan," adds approximately twelve pages to the constitution.³⁴

On principle, most men will admit the wisdom of having a shorter statement of the basic law of the government. When it comes down to cases, however, every man wants his own particular hobby written at length into the constitution; he is sure that he knows just how to write it, and he wants it to be written down in full. He is very often mistaken, and sometimes finds it out too late. In any case, the length of modern state constitutions is due very

³⁰ *McConaughy v. Secretary of State, supra.*

³¹ *Leg. Man.* 1909, p. 46, insert.

³² *McConaughy v. Secretary of State, supra.*

³³ See pp. 237-40.

³⁴ See pp. 252-65.

largely to the fact that legislatures and constitutional conventions and the people who ratify their proposals are less interested in the theoretical and practical merits of having short constitutions than they are in the very practical value of having things written down in full in black and white. When and where constitutions are easy to amend there is no great objection to having them long. Where, as in Minnesota today, it is very difficult to change them, there is an unquestionable advantage in having the constitution a document which deals solely with fundamentals rather than one which has been so filled with detail as to hamper the government in its daily operation. Fundamentals should, perhaps, be written down in tables of bronze; but fundamentals are usually capable of brief statement like the ten commandments and the federal bill of rights. Who will venture to say that he can foresee in detail the needs of the government of this state at a period fifty years hence? Yet the constitution of Minnesota with its many detailed provisions, is now over sixty years old.