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STATE OF OHIO

**OHIO CONSTITUTIONAL
REVISION COMMISSION**

**Recommendations for Amendments to
the Ohio Constitution**

**FINAL REPORT
INDEX TO PROCEEDINGS AND RESEARCH**



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SERVICES OF MISSISSIPPI
STATE HOUSE

Article XVI, Sections 2 and 3 Amending the Constitution

Present Constitution

Section 2. Whenever two-thirds of the members elected to each branch of the general assembly, shall think it necessary to call a convention, to revise, amend, or change this constitution, they shall recommend to the electors to vote on a separate ballot without party designation of any kind at the next election for members to the general assembly, for or against a convention; and if a majority of all the electors, voting for and against the calling of a convention, shall have voted for a convention, the general assembly shall, at their next session, provide, by law, for calling the same. Candidates for members of the constitutional convention shall be nominated by nominating petitions only and shall be voted for upon one independent and separate ballot without any emblem or party designation whatever. The convention shall consist of as many members as the house of representatives, who shall be chosen as provided by law, and shall meet within three months after their election, for the purpose, aforesaid.

Section 3. At the general election to be held in the year one thousand nine hundred and thirty-two and in each twentieth year thereafter, the question: "Shall there be a convention to revise, alter, or amend the constitution", shall be submitted to the electors of the state; and in case a majority of the electors, voting for and against the calling of a convention, shall decide in favor of a convention, the general assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon.

Commission Recommendation

The Commission recommends that Article XVI, Sections 2 and 3 be retained in the Constitution without change. Section 1 of Article XVI was the subject of the Commission's third report to the General Assembly.

History and Background of Sections

The Ohio Constitution provides several methods for amending, revising or changing the Constitution. Article XVI, Section 1, recently amended by the electorate to simplify ballot language and procedures, permits either branch of the General Assembly to propose amendments, and if agreed to by 3/5 of each house, the amendment is submitted to the voters for their approval. Amendments may be placed on the ballot by initiative petitions, as set forth in Article II, Section 1a. Article XVI, Section 2 provides for the General Assembly to call a constitutional convention. Section 3 requires a mandatory referendum on the question of calling a constitutional convention every twenty years.

The 1802 Constitution provided for the calling of a constitutional convention by the General Assembly at its discretion, with the restriction that the Constitution could never be revised to permit slavery or involuntary servitude in Ohio. No other method of amending the Constitution was provided. At the 1851 Constitutional Convention, two additional methods of amending the Constitution were proposed. Article XVI, Section 1 permitting legislatively-adopted constitutional amendments to be submitted to the voters for their approval or rejection, and Article XVI, Section 3, requiring a mandatory referendum on the question of calling a constitutional convention, were approved by the Convention. Article XVI, Section 2 as adopted by the Convention contained a provision for calling a constitutional convention by the General Assembly in basically the same form as the provision in the 1802 Constitution. The wisdom of providing three methods of amending the Constitution (the constitutional initiative was not adopted until 1912), and the size of the delegation to the constitutional convention were the subjects of debate. The 1802 Constitution provided for the number of delegates to equal that of the General Assembly membership, and some considered the number too large. The number of delegates was limited to the members of the House of Representatives in the final draft adopted by the Convention.

In 1871, pursuant to Section 3 of Article XVI of the newly-adopted Constitution of 1851, the question of calling a constitutional convention was put to the people and approved by a vote of 264,970 for and 104,231 against. The 1873-1874 Constitutional Convention considered a substitute for Article XVI, retaining the methods of legislatively proposed constitutional amendments and legislatively proposed constitutional conventions but deleting the section requiring the mandatory submission of the question of calling a constitutional convention to the people every 20 years. One delegate commented that the pressure for the 1873-1874 Convention was on account of defects in the judiciary system, and the legislature, knowing that the question of calling a constitutional convention was up for a vote in 1871, was influenced by that not to submit constitutional amendments to the people. The substitute for Article XVI did not receive a sufficient number of votes to be adopted by the Convention, and in the proposed Constitution of 1874 that was rejected by the people, Article XVI remained unchanged. In 1891, the question of calling a constitutional convention was defeated by the voters, 99,784 for, and 161,722 against, and the convention call was approved in the 1910 election by a vote of 693,263 for, and 67,718 against.

Delegates to the 1912 Constitutional Convention considered several substantive changes in Article XVI. It was generally agreed that the framers of the 1851 Constitution made the document too difficult to amend. What was referred to as "the greatest fundamental change" was a recommendation that the number of votes required to pass a constitutional amendment be changed from a majority of those voting in the election to a majority of those voting on the question. Another major change was the elimination of party position on the ballots. Constitutional amendments were to be printed on ballots separately from the party ticket so they could be considered on their merits. Delegates to constitutional conventions were to be nominated only by nominating petitions and voted for on a separate, non-partisan ballot. Debate continued on the size of the delegation to a constitutional convention, and the numerical basis remained the membership in the House of Representatives, as in the 1851 Constitution. Since these changes proposed by the 1912 Convention were adopted by the voters, Sections 2 and 3 in Article XVI have not been amended.

Thirty-eight states provide specifically for calling a constitutional convention in their constitutions. All but one of the remaining twelve have held at least two constitutional conventions, suggesting an inherent right to call conventions by the legislature in the absence of specific constitutional authorization.¹ The convention referendum provisions are of two types. In twelve states there is a mandatory referendum; in Maryland, this is the only method of calling a convention, in the other states, the method is in addition to a provision permitting the legislature to initiate the convention call. Of these twelve states, six have self-executing provisions, and six, including Ohio, require further legislative action. A problem theoretically might arise if the people voted in favor of a convention and the legislature refused to act. In Ohio, the people have not approved calling a constitutional convention since 1912, and this potential difficulty has not arisen. Some states require a majority vote of all those voting in an election to carry the convention question. Ohio, in 1912, amended its constitution to require only a majority of those voting on the question.

The constitutional convention can perform several functions with respect to constitutional amendment. The convention is the chief method for full scale revision of the fundamental law, but it can serve other purposes. For example, the convention may choose to submit separate amendments to the voters, rather than offering an entirely new constitution. In Ohio, the 1873-1874 Convention submitted a new constitution to the voters, which was defeated, and the 1912 Convention submitted 41 separate amendments. Thirty-three were adopted by the people and eight were rejected. The 1970 Illinois Constitutional Convention submitted a combination of an entirely new constitution and separate alternates.

In some states, a limited constitutional convention has been used to circumvent a more difficult amendment procedure, that requires action by two successive legislatures to place amendments on the ballot. Limitations

¹*Harvey v. Ridgeway*, 450 S.W. 2d, 281 (1970); *Board of Supervisors of Elections v. Attorney General*, 246 Md. 417, 229 A. 2d 388 (1967).

on a convention may be approved by the voters at the convention call, or set by the convention itself, when it chooses to limit its proposals to amending the existing constitution. It is not known whether the Ohio constitutional provisions regarding calling a constitutional convention prohibit or permit a limited convention, since no such efforts have been made in Ohio.

Sections Not Studied by a Committee

The following sections in Article II were not referred to a committee for study, and no recommendations are made concerning them: Sections 23 and 24 (impeachment); 38 (removal of officers from office); 39 (expert testimony in criminal trials); 40 (land registration).

Article II Sections 23 and 24

Sections 23 and 24 of Article II establish impeachment as a method of removal from office in Ohio and prescribe who is subject to impeachment. Section 38 authorizes the General Assembly to establish statutory methods for removal of officers in addition to any constitutional methods which may be provided. The existing constitutional methods are removal by impeachment under Section 23 of Article II and by concurrent resolution of the General Assembly under Section 17 of Article IV, the latter being applicable only to judges.

Article II, Section 23 states:

The House of Representatives shall have the sole power of impeachment, but a majority of the members elected must concur therein. Impeachments shall be tried by the Senate; and the Senators, when sitting for that purpose, 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.

And Section 24 states:

The Governor, Judges, and all State officers, may be impeached for any misdemeanor in office; but judgment shall not extend further than removal from office, and disqualification to hold any office, under the authority of this State. The party impeached, whether convicted or not, shall be liable to indictment, trial, and judgment, according to law.

These sections can be traced to the Ohio Constitution of 1802 and were adopted in their present form as original parts of the Constitution of 1851. These sections are modeled after the Federal Constitution, which also provides for impeachment, in the following language:

The House of Representatives . . . shall have the sole power of Impeachment. (Article I, Section 2)

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose they shall be on or affirmation . . . and no person shall be convicted without the concurrence of two thirds of all members present. (Article I, Section 3)

Judgments in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law. (Article I, Section 3)

The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. (Article II, Section 4)

The trial of all crimes, except in cases of impeachment, shall be by jury; . . . (Article III, Section 2)

Neither the Federal Constitution nor the Ohio Constitution defines what constitutes a "misdemeanor" sufficient to subject the offender to impeachment, but there appears to be agreement that the constitutional meaning of