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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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The Ohio Constitutional Revision Commission

The 108th General Assembly (1969-1970) created the Ohio Constitutional Revision Commission and charged it with these specific duties:¹

- (A) studying the Constitution of Ohio;
- (B) promoting an exchange of experiences and suggestions respecting desired changes in the Constitution;
- (C) considering the problems pertaining to the amendment of the Constitution;
- (D) making recommendations from time to time to the General Assembly for the amendment of the Constitution.

Although there is no legislative history in Ohio from which the rationale for specific legislation can be ascertained with certainty, it is not difficult to reach conclusions about the reasons for the passage of this legislation. The decades of the 50's and 60's saw intense interest in the role of state and local government in the federal system and part of this interest focussed on state constitutions. Examination of these constitutions, many of which dated from the mid- or latter-19th century, revealed that they restricted operations of state and local governments in ways that prevented growth and the provision of services needed by people in the modern age, and that they included statutory details, many of which had become seriously obsolete. An examination of Ohio's Constitution, adopted by the people in 1851 and amended more than 100 times since then, became part of a well-documented trend.

Another reason for the creation of the Commission at that particular time was realization that Ohio voters would face the question: "Shall there be a convention to revise, alter, or amend the Constitution?" at the general election in November, 1972. Ohio constitution-makers in 1851 followed Thomas Jefferson's philosophy that each generation should have an opportunity to choose its own form of government, and provided that the question of calling a convention should be placed on the ballot every twenty years. Anticipating the convention question, the General Assembly also instructed the Commission, if a convention were called by the voters in 1972, to report its recommendations with respect to the organization of a convention to the General Assembly (which has the responsibility to pass enabling legislation if a convention is called) and to report its recommendations for constitutional amendments to the convention. Thus, the Ohio Commission was viewed by the General Assembly that created it as serving two purposes -- a preparatory body to a convention, if a convention should be called, and a revisory body to study the Constitution and advise the General Assembly with respect to needed changes.

Two important citizen organizations, the National Municipal League and the League of Women Voters had been instrumental in promoting state constitutional study and, where appropriate, revision or the adoption of a new constitution. Materials published by the National Municipal League, including the League's Model State Constitution, have been studied and used extensively by the Commission. In Ohio, the League of Women Voters was prominent among the groups that encouraged the General Assembly to create a study commission. The League has studied many aspects of the Ohio Constitution, published useful background materials available not only to its own members but to the public, and taken an active role in educating voters on constitutional issues. Another group active in urging the creation of the Commission was the Citizens for a Modern Ohio Constitution, a group of citizens in both public and private life who believed that Ohio's Constitution needed serious study.

Two other projects in Ohio in the late 60's and early 70's were geared toward examining constitutional issues and providing information to Ohio voters in 1972. The Stephen H. Wilder Foundation commissioned the Institute of Government Research, at the University of Cincinnati to make a systematic study of the Ohio Commission, and that Report, written by W. Donald Heisel and Iola O. Hessler, was published in 1970 under the title "State Government for Our Times: A New Look at Ohio's Constitution". It was very helpful in the work of the Commission. The Wilder Foundation had authorized the publication of a similar report in 1951, entitled "An Analysis and Appraisal of the Ohio State Constitution, 1851-1951", prior to the question of calling a convention appearing on the ballot in 1952. The 1951 report was prepared by twelve members of the Social Science Section of The Ohio College Association.

¹Am. Sub. H.B. 240. See Appendix L.

The second project was sponsored by the Center for Urban Regionalism at Kent State University, with financial support from the Greater Cleveland Associated Foundation. A conference in November, 1969, attended by faculty members and students from 29 Ohio colleges and universities, was followed by the commissioning of papers on specific topics related to constitutional revision. These papers were published in 1972 by The Kent State University Press in the book "Political Behavior and Public Issues in Ohio", edited by John J. Gargan and James G. Coke, of Kent State University. These papers, also, proved most helpful in the work of the Commission.

The General Assembly created a Commission composed of thirty-two members, 12 of whom are members of the legislature chosen, three each, by the four legislative leaders, and an additional twenty nonlegislators chosen by the twelve legislators. The first meeting of the legislative members was held in January, 1970, and the twenty public members were chosen at a meeting in September, 1970. Mrs. Ann M. Eriksson was named Director and staff were employed, and the Commission's study of the Ohio Constitution began in earnest in February, 1971.

The Commission elected Mr. Richard H. Carter as Chairman and Mrs. Linda Orfirer as Vice-Chairman. In his remarks accepting the chairmanship, at the February meeting, Mr. Carter stated that the sizeable task of constitutional revision in Ohio would call for the best efforts of all Commission members and emphasized the nonpartisan nature of the job. He also noted that a major chore of public education lay ahead if the Commission's work is to be successful. Four committees were created in order to establish a format and procedures for Commission operations.

The Organization and Administration Committee was originally chaired by Senator Applegate and later by Senator Ocasek. This committee reviewed the Commission budget, handled subject-matter committee assignments, and prepared Rules for Commission consideration.

The Committee on Liaison with Governmental and Public Groups was chaired by Representative Fry. This committee was made a number of recommendations with respect to contacts with governmental and other organizations. As a result of these recommendations, letters explaining the organization and purposes of the Commission were sent to all members of the General Assembly, the head of each state department or agency and the Chief Justice of the Ohio Supreme Court. In addition, professional and business organizations were contacted.

The Public Information Committee was chaired originally by Mr. Ross and later by Mr. Heminger. The committee made several recommendations to the Commission, including proposing information meetings for members of the Commission to acquaint them with the problems of constitutional revision generally, standards for the content and drafting of state constitutions and information on the various subjects undertaken for study by the Commission or its committees. The committee also proposed meetings or seminars to be held for the purpose of providing public information on subjects of Commission study or for explaining Commission recommendations to the public and offering an opportunity for public comment or testimony. Later, a monthly newsletter was instituted to provide public information about the activities of the Commission.

The Subject Matter Committee was chaired by Senator Taft. This committee recommended that the Commission be divided into four committees to begin studies of four different constitutional topics as follows: The Legislature, the Executive Branch, Local Government, and Finance and Taxation. This plan was adopted by the Commission, and the Subject Matter Committee then indicated to each committee the particular portions of the Constitution which appeared to fall within the scope of the committee assignment.

Pursuant to its statutory duties, the Commission, early in its deliberations, considered "the problems pertaining to the amendment of the Constitution", particularly whether it was necessary to seek an amendment to the Constitution to broaden the purposes for which subsequent amendments could be placed before the voters. After a review of the amending provisions of the Ohio Constitution (Article XVI), precedents, and court interpretations of these provisions and precedents, the Commission reached a consensus that its work could be effectively accomplished within the present constitutional provisions, and an amendment to the amending procedures need not be sought.

The Commission then proceeded to the specific task of studying the Constitution and proposing recommendations for amendments to the General Assembly. The four original subject matter committees were organized with Mr. Pokorny serving as chairman of the Committee to Study the Executive Branch; Mr. Skipton, chairman of the Legislative Committee; Mr. Duffey, chairman of the Local Government Committee; and Mr. Carson, chairman of the Finance and Taxation Committee. Several changes in Commission membership resulted in reducing the number of subject matter committees to three by combining the Legislative and Executive Committees into one under the chairmanship of Mr. Skipton, and the resignation of Mr. Duffey brought the Local Government Committee under the leadership of Mrs. Orfirer.

As the three original subject matter committees completed their work, additional committees were established to study the remaining topics in the Constitution. The Education and Bill of Rights Committee was chaired by Mr. Bartunek; the Judiciary Committee by Mr. Montgomery; the Elections and Suffrage Committee by Mrs. Sowle; the What's Left Committee by Mr. Aalyson; and the Committee to Study the Grand Jury and Civil Trial Juries by Representative Norris.

Speakers were invited to Commission meetings during 1971 to share with Commission members and the public their experiences in constitution-making efforts in other states, to give a general overview of the Ohio Constitution, and to explain generally accepted standards of a "good" state constitution and compare provisions of the Ohio Constitution with these standards. These speakers included such distinguished persons as Dr. John P. Wheeler, Jr., of Hollins College, Virginia, who had an active role in recent constitutional revision in several states, including Maryland and Virginia; Dr. Harvey Walker², retired Ohio State University political science professor and a noted Ohio constitutional expert; and Dr. Albert L. Sturm, University Research Professor of Political Science at Virginia Polytechnic Institute and State University, a national expert on state constitutional revision.

The Honorable John J. Gilligan, Governor of Ohio, addressed the Commission at its May, 1971, meeting. The Governor emphasized the importance of the work of the Commission and indicated his concept of the task ahead with these words:

Thus, what you here today have been charged with by the people of Ohio is a responsibility perhaps far deeper and far more significant than many had anticipated. I would urge you then to start with this question: if we had no kind of government at all, what kind of government would we construct in Ohio? What kind of government would we create that would protect our liberties and yet enable us to solve the massive problems we face? That, I suggest, you might regard as your task. Not to paste and patch and mend but to start afresh with the fundamental question of what kind of basic framework should we have for our society? Having made that decision, the second decision follows, how? -- whether all in one big gulp and one big jump we achieve it or do we achieve it piecemeal over a long period of time? Unless we know where we want to get how will we ever recognize whether or not the steps that we take along the way are in the direction of our final goal or just up some kind of constitutional blind alley? A lot of us are going to be waiting for the answers you'll be producing.

Dr. Sturm³ commented on the general nature of a state constitution, and on some common ideas of standards of excellence expressed in writings on state constitutions, as follows:

All American state constitutions as fundamental laws embody the basic principles of political democracy such as popular sovereignty and especially limited government, which is implemented through the familiar tripartite separation of powers, checks and balances, the bill of rights, and other limitations, particularly on the legislature. State constitutions set forth the basic structural framework of government in varying detail, and they contain both positive and restrictive provisions for the exercise of governmental powers. They define boundaries, specify suffrage qualifications and the manner of conducting elections, and provide methods for amendment and revision. Much of their verbiage is accounted for by articles reflecting the complexity and diversity of functional growth--local government, finance, education, highways, corporations, welfare, health, and other areas of governmental activity.

²Dr. Walker's sudden death in the Spring of 1971, was noted with sadness by members of the Commission.

³An address prepared for Delivery at an Open Meeting of the Constitutional Revision Commission, September 16, 1971, mimeographed.

Unlike the makers of the Constitution of the United States, the framers of state organic laws traditionally have been far more concerned with limiting government than with enabling and vitalizing it as an effective instrument for accomplishing social objectives. In essence, state constitutions are bundles of limitations on the states in the exercise of residual powers. They have been far less flexible than the federal document. The Constitution of the United States has been adapted to changing times and needs mainly by statutory and executive elaboration and judicial interpretation, with only twenty-six formal amendments during 182 years of effective operation. In contrast, the states have relied far more on formal amendments.

..... *General Documentary Characteristics:* Consistency with the Constitution of the United States; inclusion only of fundamental matters, excluding substance of a detailed or temporary nature that is essentially statutory, use of clear, direct, simple language readily intelligible to the average citizen, and arrangement of contents in logical order; and, conversely, avoidance of obscure and technical phraseology ("legalese"), inconsistencies, obsolete provisions, and poor organization.

In November, the Commission co-sponsored with the Ohio State University College of Law and the Ohio Municipal League, a local government seminar, focusing on a number of problems of local government with emphasis on their constitutional aspects. Papers from the seminar were published as a Local Government Symposium in the Ohio State Law Journal in 1972, Vol. 33, No. 3. Many outstanding speakers participated in this seminar, headed by Jefferson B. Fordham, retired Dean of the University of Pennsylvania Law School and formerly Dean of the Ohio State University College of Law. Dr. Fordham is a leading national expert on local home rule, and contributed to an examination of many provisions of the Ohio Constitution when the question of calling a convention was on the ballot in 1952.

The Commission determined, after discussion of the convention question, that it should not take a position on whether or not a convention should be called, and proceeded with its studies of the Constitution according to schedule. As had happened in 1932 and 1952, the question of calling a convention was defeated at the polls in 1972; 62% of those voting on the question voted "no".

Each subject matter committee met approximately monthly; studied research materials prepared by staff and consultants on the topic under consideration; invited public comment on the issues before it; solicited opinions and testimony from experts on the subject; and finally formulated recommendations to be presented to the Commission. The statute creating the Commission required that 2/3 of the members agree before a recommendation becomes a Commission recommendation to the General Assembly, thus requiring a substantial consensus, of necessity eliminating strictly partisan considerations, for a Commission recommendation.

The Rules adopted by the Commission required that all Commission and committee meetings be open to the public, and that at least one opportunity for public testimony be offered on all proposed recommendations before their submission to the General Assembly.

The Commission has attempted to inform and educate the public on constitutional matters, as well as to solicit information and opinions, by issuing press releases of Commission meetings inviting public attendance and testimony, by mailing information about both committee and Commission meetings, research materials, brief summaries of meetings, copies of reports, and a monthly newsletter, to all who requested such materials, and by mailing the monthly newsletter to a larger group of persons and organizations, including all the news media in the state.

Several principles discussed and agreed to early in Commission operations guided the work of the committees and the Commission. It was agreed that the Commission would take no position, either for or against, on constitutional issues and questions other than Commission recommendations. With respect to the question of recommending changes solely for the purpose of improving language or arrangement, it was agreed that such changes would be avoided, although both language improvement and rearrangement have been recommended where they serve the purposes of improving understanding, clarity, and logic of arrangement. The principles of drafting that have been followed are those enunciated in the "Bill Drafting Manual" of the Ohio Legislative Service Commission.

The first report was presented to the General Assembly early in 1972 and covered the organization, administration, and procedures of the General Assembly. It resulted from the work of the Legislative-Executive Study Committee. It included substantive changes such as constitutionally requiring annual sessions and permitting the General Assembly leadership to call the Assembly into special session, as well as the elimination of obsolete language such as requiring bills to be "read" on three separate occasions before passage and replacing this requirement with a requirement for three considerations of each bill. Among the important substantive recommendations in the first report was one for the joint election of the Governor and Lieutenant Governor and replacing the duty of the Lieutenant Governor to preside over the Senate with provision for establishing clearly executive responsibilities for that office.

All of the recommendations in the first report were incorporated in a single resolution and introduced into the General Assembly in 1972. Several sections were eliminated in the course of legislative action on the resolution, but most were retained and placed on the ballot in May of 1972. In considering the various ways of presenting the recommendations to the voters, Commission members studied court decisions interpreting the language of Section 1 of Article XVI of the Constitution: "When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately." Commission members viewed all the recommendations in the resolution as relating to the same subject, and therefore properly submitted as one amendment. However, the proposal was challenged and the Ohio Supreme Court concluded (*State ex rel. Roahrig, et al. v. Brown* (1972), 30 Ohio St. 2d 82) that it did violate the "one amendment" rule of Section 1 of Article XVI and it was ruled off the ballot. Subsequently, the proposals in the first report were reintroduced in the General Assembly as four separate amendments, and three of them, including the bulk of the recommendations relating to strictly legislative matters, were placed on the May, 1973 ballot. The most important of the three (legislative organization and procedures) was adopted; the two defeated issues would have repealed sections that the Commission considered obsolete but which, because of the ballot language used to present them to the voters, apparently were viewed as substantive matters by the voters. The fourth, which was the joint election of Governor and Lieutenant Governor, was not adopted again by the General Assembly and placed on the ballot until June of 1976. Only two proposals in the first report have never reached the ballot -- one dealing with an extraordinary majority of the General Assembly necessary to create new courts or judgeships, which has been included in the Judiciary Report, and one proposing the payment of expenses to legislators.

Early in 1973, the second report was presented to the General Assembly, dealing with State Debt. The third report dealt with the problem of presenting constitutional amendments to the voters in a fair and objective manner and language that they could understand, without the inclusion of unnecessary and confusing detail and legalese. It proposed the creation of a Ballot Board to prepare ballot language, and standards for contents of the ballot language and for information to be supplied to the voters. It was placed on the ballot by the General Assembly in May, 1974, and adopted by the voters. Subsequent reports, in the order in which presented, were: Taxation, The Indirect Debt Limit, The Executive Branch, Elections and Suffrage, Local Government, Initiative and Referendum, Judiciary and The Bill of Rights. The recommendations and explanatory material from all eleven reports will be found in the Appendix.

This Final Report contains those recommendations not previously presented to the General Assembly, covering Education, Corporations, Public and Private Employees and Employment, Apportionment, Militia, Public Institutions, Grand Juries and Civil Trial Juries, and miscellaneous matters.

Working closely with the legislative leadership and with the legislative members of the Commission, the Commission has attempted to have its proposals introduced in the General Assembly and placed before the voters for voter action. The greatest amount of legislative action on Commission proposals was during the 1975-1976 session, after nine of the eleven reports had been submitted. As of this writing, sixteen amendments emanating from Commission recommendations have gone to the voters and thirteen have been adopted. The sixteen included proposals relating to General Assembly organization and procedures and creation of the Ballot Board (noted above), joint election of Governor and Lieutenant Governor, gubernatorial succession and disability,

clarification of taxation provisions, removal of restrictions on the right to vote and clarifications of election provisions, expansion of industrial development revenue bond purposes, removing the "indirect" debt limit restrictions on local government, and others. Among the significant recommendations of the Commission that the General Assembly has considered but not yet submitted to the voters are proposals for a flexible state debt limit, increasing the powers of county government, and permitting limited classification of counties, removing some barriers to adoption of county charters and clarifying provisions for the adoption of county and municipal charters, changes in the initiative and referendum provisions to simplify and increase citizen understanding of these processes, and changes in the structure of the judicial system, notably to provide for a unified trial court. Several proposals are pending in the 112th General Assembly, and may be placed on the November, 1977 ballot.

As 1976 drew to a close, it was apparent to Commission members, twelve of whom had been members of the Commission since its beginning, that the primary task of the Commission -- a comprehensive study of the Ohio Constitution with recommendations for amendments to the General Assembly -- would be completed within the next few months. Although the statutory date for completion of the Commission's work and expiration of the terms of the members was July 1, 1979, the Commission determined that little justification existed for continuing after its task was completed and that it would present a Final Report to the General Assembly two years earlier than originally planned. The research documents and all Commission and committee meeting summaries are being printed in limited quantities for placement in libraries across the state where they will be readily available for public inspection and study. It is hoped, of course, that the recommendations, materials, and the discussions of the Commission and its committees will continue to be of value to the General Assembly and to all interested in Ohio's Constitution for many years to come.