OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Education, Public Institutions, and Local Government Committee

Chad A. Readler, Chair
Edward L. Gilbert, Vice-chair

Part II

September 8, 2016

Ohio Statehouse
Room 017

OCMC Education, Public Institutions, and Local Government Committee

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE
EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

OHIO CONSTITUTION
ARTICLE VI, SECTION 5

LOANS FOR HIGHER EDUCATION

The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VI, Section 5 of the Ohio Constitution concerning loans for higher education. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article VI, Section 5 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article VI, Section 5 reads as follows:

> To increase opportunities to the residents of this state for higher education, it is hereby determined to be in the public interest and a proper public purpose for the state to guarantee the repayment of loans made to residents of this state to assist them in meeting the expenses of attending an institution of higher education. Laws may be passed to carry into effect such purpose including the payment, when required, of any such guarantee from moneys available for such payment after first providing the moneys necessary to meet the requirements of any bonds or other obligations heretofore or hereafter authorized by any section of the Constitution. Such laws and guarantees shall not be subject to the limitations or requirements of Article VIII or of Section 11 of Article XII of the Constitution. Amended Substitute House Bill No.618 enacted by the General Assembly on July 11, 1961, and Amended Senate Bill No.284 enacted by the General Assembly on May 23, 1963, and all appropriations of moneys made for the purpose of such enactments, are hereby validated, ratified, confirmed, and approved in all

> respects, and they shall be in full force and effect from and after the effective date of this section, as laws of this state until amended or repealed by law.

Article VI of the Ohio Constitution concerns education, and Section 5 provides for a program to guarantee the repayment of student loans for state residents as a way of promoting the pursuit of higher education.

Adopted by voters upon being presented as Issue 1 on the May 1965 ballot, the provision expresses a public policy of increasing opportunities for state residents to pursue higher education by guaranteeing higher education loans and allowing laws to be passed to effectuate that purpose. The section also exempts state expenditures for student loan guarantees from the limitations on state spending contained in Article VIII (relating to state debt), and Article XII, Section 11 (preventing the state from issuing debt unless corresponding provision is made for levying and collecting taxes to pay the interest on the debt).

The provision was effectuated by statutes that first created the Ohio Student Loan Commission (OSLC), and, later, in 1993, by statutory revisions that created the Ohio Student Aid Commission (OSAC). The name change was prompted by the addition of state grant and scholarship programs to the administrative duties of OSLC, programs that previously had been under the auspices of the Ohio Board of Regents (now the Ohio Board of Higher Education).

As outlined in a 1993 Attorney General Opinion, the OSAC consisted of nine members appointed by the governor with the advice and consent of the Senate, with powers and duties that included the authority:

> " * * * [T]o guarantee the loan of money for educational purposes; to acquire property or money for its purposes by the acceptance of gifts, grants, bequests, devises, or loans; to contract with approved eligible educational institutions for the administration of any loan or loan plan guaranteed by the OSAC; to contract with "approved lenders," as defined in R.C. 3351.07(C), for the administration of a loan or loan plan guaranteed by the OSAC and "to establish the conditions for payment by the commission to the approved lender of the guarantee on any loan," R.C. 3351.07(A)(4); to sue and be sued; to collect loans guaranteed by the OSAC on which the commission has met its guarantee obligations; and to "[p]erform such other acts as may be necessary or appropriate to carry out effectively the objects and purposes of the commission," R.C. 3351.07(A)(10). Further, pursuant to R.C. 3351.13, the Ohio Student Aid Commission "is the state agency authorized to enter into contracts concerning the programs established" by those federal educational loan programs specified in that statute. The OSAC also has authority to "accept any contributions, grants, advances, or subsidies made to it from state or federal funds and shall use the funds to meet administrative expenses and provide a reserve fund to guarantee loans made pursuant to [R.C. 3351.05-.14]." R.C. 3351.13. [1]

In relation to its duties, the OSAC was empowered to collect loan insurance premiums, depositing them into a fund in the custody of the state treasurer to be used solely to guarantee

loans and to make payments into the OSAC operating fund. Such moneys were reserved solely to pay expenses of the OSAC. Asked whether language in Article VI, Section 5 indicating the state would guarantee the repayment of educational loans meant that the full faith and credit of the state had been pledged to cover that debt, the attorney general opined that the obligations incurred by OSAC are not backed by the full faith and credit of the state and, therefore, that the obligee would not have recourse to other funds of the state.

By 1995, the changing landscape of the student loan market rendered the utility of OSAC obsolete, partly due to the success of a federal direct-lending program, and partly because private companies were offering the same service.[2] Thus, OSAC commissioners voted to dissolve the agency at the conclusion of the biennial budget cycle in June 1997.[3] OSAC was eliminated by the 121st General Assembly with the passage of Am. Sub. H.B. 627, effective January 3, 1997, and any remaining functions and duties of OSAC were transferred to the Ohio Board of Regents. Finally, with the passage of H.B. 562 in the 122nd General Assembly, all references to the duties and authority of OSAC were eliminated from the Revised Code.[4]

Amendments, Proposed Amendments, and Other Review

Section 5 has not been amended or reviewed since its adoption in 1994.

Litigation Involving the Provision

Although the Ohio Supreme Court has not reviewed Section 5, a federal court case addressed whether federal law changes requiring states to return excess funds in their student loan guarantee accounts to the federal government violated the United States Constitution.

In *Ohio Student Loan Comm. v. Cavazos,* 709 F.Supp. 1411 (S.D. Ohio 1988), the court described the history of the hybrid federal-state arrangement regarding student loan guarantees:

> The Ohio Higher Education Assistance Commission ("OHEAC") was created by the Ohio General Assembly in 1961 and began operations in 1962. The OHEAC was originally funded solely with state appropriations and was designed to administer state programs to assist Ohio residents attending institutions of post-secondary education. In particular, the OHEAC guaranteed loans made by private lenders to certain eligible students.
>
> Three years later, the United States Congress created the Guaranteed Student Loan Program pursuant to the Higher Education Act of 1965, as amended, 20 U.S.C. 1071 et seq. The purpose of this program was to encourage states and nonprofit organizations and institutions to establish student loan guaranty programs, to provide a federal guaranty program for those students not having reasonable access to state or private guaranty programs, to subsidize interest payments on student loans, and to reinsure state and private guaranty programs. 20 U.S.C. 1071(a). In response to this federal program, the Ohio General Assembly created the OSLC, pursuant to Chapter 3351 of the Ohio Revised Code,

> as a successor to the OHEAC. The creation of such a commission was authorized by Article VI, Section 5 of the Constitution of the State of Ohio.
>
> The OSLC is a state agency created for the administration of Ohio's student loan guaranty program. The OSLC is authorized to enter into contracts and to sue and be sued in its own name. R.C. 3351.07. In addition, R.C. 3351.07(A)(2) expressly states "that no obligation of the commission shall be a debt of the state, and the commission shall have no power to make its debts payable out of moneys except those of the commission." The OSLC is also expressly authorized to accept federal funds and to enter into contracts pursuant to the Higher Education Act of 1965, as amended, 20 U.S.C. 1071 et seq. R.C. 3351.13.

As described in the facts of the case, OSLC's funding sources derived partially from federal government reimbursements for losses sustained due to student loan defaults, and federal payment of administrative cost allowances, but OSLC also received money from non-federal sources in the form of private lender fees, and interest and investment income from moneys held in a reserve fund. The program was subject to a federal-state reinsurance agreement providing that OSLC would administer the guaranteed student loan program in Ohio in exchange for which the secretary of the U.S. Department of Education would reinsure the state's guarantees.

In 1987, the relevant law was amended to limit the amount of state cash reserves, requiring any excess to be transferred to the secretary. A dispute arose when OSLC refused to transfer its excess reserves, which amounted to over $26 million, on the grounds that the transfer would violate the terms of the contractual agreement between the secretary and OSLC. In response, the secretary withheld the reinsurance funds, and OSLC sued, and won, in federal district court.

However, the United States Court of Appeals for the Sixth Circuit reversed, concluding the secretary was transferring the funds from a federal program with a state administrator, rather than appropriating funds from a state program, and that none of the facts supported a conclusion that the federal government had breached a contract, misappropriated funds, or violated due process or other constitutional rights. *Ohio Student Loan Comm. v. Cavazos,* 900 F.2d 894 (6th Cir. 1990).

Presentations and Resources Considered

Harmon Presentation

On June 9, 2016, David H. Harmon, former executive director of OSLC, presented to the committee. Mr. Harmon was employed with OSLC from 1977 to 1988, and was executive director from 1984-88. According to Mr. Harmon, Ohio was one of the earliest states to recognize a need for the support and encouragement of the provision of credit for the financing of higher education. He noted the General Assembly acted in July of 1961 to create the Ohio Higher Education Commission, whose purpose was to guarantee repayment of student loans made by banks, savings and loan companies, and credit unions. The Higher Education Commission collected an insurance premium on each loan as it was made, covering

administrative expenses and creating an insurance fund from which lender guaranty payments could be made.

Following the model established in Ohio and several other states, Mr. Harmon said the federal government moved in 1965 to create a federal program operating on the same principles. Mr. Harmon said the point of the constitutional section in 1965 was to allow OSLC to become the guaranteed agency under the federal loan program. He said the federal Guaranteed Student Loan Program was a part of the Higher Education Act of 1965. In response, in 1967, Ohio designated the Ohio Higher Education Commission as the state's guaranty agency, renaming it OSLC.

Mr. Harmon said the federal program provided for the "re-insurance" of all loans – meaning whenever the states paid off an insured loan, the federal government would reimburse the agency for each payment. He said OSLC continued collecting insurance premiums as loans were approved, providing the necessary revenue for agency operations.

During his time with the agency, Mr. Harmon said the annual loan volume grew from $21.1 million in 1970 to $120.3 million in 1978 – a 570 percent increase. He said the volume of loans guaranteed in 1979 was nearly double the 1978 loan volume. Mr. Harmon said OSLC began with only three employees in 1962, but grew to over 50 in 1970, and reached nearly 250 by the early 1990s.

Mr. Harmon said the 1980s saw the beginning of competition for loan volume, as several multi-state guaranty agencies began offering services to Ohio students, schools, and lenders. He said, although these competitors were non-profits, as required by federal law, increased loan volume brought increased revenue – thereby enhancing the ability of these agencies to offer enhanced support and automation.

Mr. Harmon said OSLC lacked the resources and spending authority to match these competitors on a feature-by-feature basis, but did respond to competitive developments. He said in 1992, the General Assembly authorized a move of the Ohio Instructional Grant Program from the Ohio Board of Regents to OSLC, resulting in the agency being renamed the Ohio Student Aid Commission (OSAC).

He noted that, despite the fact that the agency provided schools and students with enhanced service levels and streamlined processes, schools, lenders and student borrowers all found the competitive offerings from the out-of-state guarantors to be compelling, and the OSAC's market share, expressed as loan volume, plummeted.

Mr. Harmon said the creation of the Federal Direct Loan Program in the early 1990s resulted in a vote by the OSAC in 1995 to abolish the agency. He said, by that time, the OSAC's share of Ohio's loan volume had fallen to below 50 percent and revenues declined along with the loan volume. Thus, the OSAC ended its 36-year run at the end of the state's biennial budget cycle in 1997. As a result, the state's guaranty agency designation was awarded by the U.S. Department of Education to an out-of-state competitor, and the grant and scholarship programs were transferred to another state agency.

Asked whether there is any need to retain Article VI, Section 5, Mr. Harmon said, with the move to the federal direct loan program, no states have a guaranteed program any longer. Thus, he said, the section is no longer necessary. Mr. Harmon said unless new legislation is a precise mirror of previous legislation, it is unlikely that Section 5 could be repurposed for the new legislation. He said he is not sure a change in the constitution was ever necessary to allow OSLC, but any need for new law could be done by statute rather than by constitutional amendment.

Mr. Harmon was asked whether eliminating Section 5 could prevent the state from promulgating programs that would forgive loan indebtedness for graduates who accept certain types of employment, such as teaching or medical jobs in underserved communities. Mr. Harmon said those types of programs are unrelated to the constitutional provision, were never part of OSLC, and could be created legislatively.

Estep Presentation

Rae Ann Estep, currently deputy director of operations at the Office of Budget and Management (OBM), testified before the committee on June 9, 2016 to provide her perspective as a former executive director of the of the Ohio Student Aid Commission (OSAC) from 1995-1997. Ms. Estep said the mission of the OSAC was to administer the federal-guaranteed student loan program, and to provide loan information to students and their families. She said the OSAC also administered a state grant and scholarship program. According to Ms. Estep, the OSAC consisted of nine persons serving three-year terms, with two members representing higher education institutions, one representing secondary schools, and the three remaining members representing approved lenders. Ms. Estep said, during her tenure, the OSAC staff consisted of an executive director and 225 employees.

Ms. Estep continued that, in the summer of 1995, the OSAC began proceedings to dissolve itself due to changes in financial aid policy on the federal and state levels in the 1990s. She said a primary factor was competition from private companies and the OSAC's subsequent declining market share of student loans. She noted that, in 1989, the OSAC guaranteed 99 percent of the state's higher education loans, but that number fell below 50 percent in 1995. She commented that the OSAC administered a federal program with federal money, and was in direct competition with private companies offering the same service. In addition, the OSAC faced the threat of federal funding cuts due to the federal government's rapidly-changing financial aid policy. According to Ms. Estep, when the new federal direct lending program was established, it took away the OSAC's market share, ultimately leading to the vote to dissolve the agency.

Ms. Estep concluded by saying because the OSAC was financed by the federal government, its closing did not have a direct cost-saving measure for Ohioans. She said the grant and scholarship program, which was the only part of the OSAC's operations financed by the state, was transferred to the Ohio Board of Regents. She said the OSAC's final closure occurred on June 30, 1997. Ms. Estep noted that her tenure at the agency was focused on closing the OSAC and assisting its employees in transitioning to new positions.

Discussion and Consideration

In considering whether to recommend a change to Article VI, Section 5, the committee acknowledged that, as matters currently stand, Article VI, Section 5 would appear to be non-functional because it is not necessary to facilitate activities of the Ohio Department of Higher Education in relation to student loans, grants, and scholarships, to accommodate the federal student loan program, or to support private lender activity related to student loans.

Nevertheless, the committee was concerned that future changes to the federal government's student loan programs and policies could result in Ohio and other states taking on additional responsibilities related to student loan guarantees. Further, although the committee was uncertain whether the provision is necessary to support programs that forgive student loan debt in order to foster the provision of needed services in underserved areas of the state, the committee was reluctant to recommend its elimination in case it could be implemented in that manner. The consensus of the committee was that, in any event, the section expresses an important state public policy of encouraging higher education and helping students afford it.

For these reasons, the committee determined Article VI, Section 5 may continue to play a useful role in encouraging the state's support of funding for higher education, and so concluded the provision should be retained.

Conclusion

The Education, Public Institutions, and Local Government Committee concludes that Article VI, Section 5 should be retained in its current form.

Date Issued

After formal consideration by the Education, Public Institutions, and Local Government Committee on September 8, 2016, the committee voted to issue this report and recommendation on _____.

Endnotes

[1] Ohio Atty. Gen. Opinion No. 93-058 (Dec. 20, 1993). Available at: http://www.ohioattorneygeneral.gov/getattachment/110d0ab1-1ac3-46c3-9d07-838260f371f2/1993-058.aspx (last visited June 3, 2016).

[2] Jeanne Ponessa, "Ohio Student-Aid Agency to Dissolve Itself," Education Week (Nov. 8, 1995) http://www.edweek.org/ew/articles/1995/11/08/10oh.h15.html (last visited June 3, 2016).

[3] *Id.*

[4] *See,* http://archives.legislature.state.oh.us/bills.cfm?ID=122_HB_562 (last visited June 3, 2016).

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REPORT AND RECOMMENDATION OF THE
EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

OHIO CONSTITUTION
ARTICLE VI, SECTION 6

TUITION CREDITS PROGRAM

The Education, Public Institutions, and Local Government Committee of the Ohio Constitutional Modernization Commission issues this report and recommendation regarding Article VI, Section 6 of the Ohio Constitution concerning the tuition credits program. It is issued pursuant to Rule 8.2 of the Ohio Constitutional Modernization Commission's Rules of Procedure and Conduct.

Recommendation

The committee recommends that no change be made to Article VI, Section 6 of the Ohio Constitution and that the provision be retained in its current form.

Background

Article VI, Section 6 reads as follows:

> (A) To increase opportunities to the residents of this state for higher education, it is hereby determined to be in the public interest and a proper public purpose for the state to maintain a program for the sale of tuition credits such that the proceeds of such credits purchased for the benefit of a person then a resident of this state shall be guaranteed to cover a specified amount when applied to the cost of tuition at any state institution of higher education, and the same or a different amount when applied to the cost of tuition at any other institution of higher education, as may be provided by law.
>
> (B) The tuition credits program and the Ohio tuition trust fund previously created by law, which terms include any successor to that program or fund, shall be continued subject to the same laws, except as may hereafter be amended. To secure the guarantees required by division (A) of this section, the general assembly shall appropriate money sufficient to offset any deficiency that occurs in the Ohio tuition trust fund, at any time necessary to make payment of the full

> amount of any tuition payment or refund that would have been required by a tuition payment contract, except for the contract's limit of payment to money available in the trust fund. Notwithstanding Section 29 of Article II of this Constitution, or the limitation of a tuition payment contract executed before the effective date of this section, such appropriations may be made by a majority of the members elected to each house of the general assembly, and the full amount of any such enhanced tuition payment or refund may be disbursed to and accepted by the beneficiary or purchaser. To these ends there is hereby pledged the full faith and credit and taxing power of the state.
>
> All assets that are maintained in the Ohio tuition trust fund shall be used solely for the purposes of that fund. However, if the program is terminated or the fund is liquidated, the remaining assets after the obligations of the fund have been satisfied in accordance with law shall be transferred to the general revenue fund of the state.
>
> Laws shall be passed, which may precede and be made contingent upon the adoption of this amendment by the electors, to provide that future conduct of the tuition credits program shall be consistent with this amendment. Nothing in this amendment shall be construed to prohibit or restrict any amendments to the laws governing the tuition credits program or the Ohio tuition trust fund that are not inconsistent with this amendment.

Article VI of the Ohio Constitution concerns education, and Section 6 is designed to promote the pursuit of higher education by establishing in the constitution a government-sponsored program to encourage saving for post-secondary education.

Beginning in 1989, the General Assembly enacted Revised Code Chapter 3334, establishing a college savings program and creating the Ohio Tuition Trust Authority (OTTA), an office within the Ohio Board of Regents (now the Department of Higher Education). The OTTA was designed to operate as a qualified state tuition program within the meaning of section 529 of the federal Internal Revenue Code. *See,* R.C. 3334.02, 3334.03.

Additional statutes authorize the OTTA to develop a plan for the sale of tuition units through tuition payment contracts that specify the beneficiary of the tuition units, as well as creating a tuition trust fund that is to be expended to pay beneficiaries, or to pay higher education institutions on behalf of beneficiaries, for certain higher education-related expenses. R.C. 3334.09, 3334.11. Those expenses include tuition, room and board, and books, supplies, equipment, and other expenses that meet the definition of "qualified higher education expenses" under section 529 of the Internal Revenue Code. R.C. 3334.01(H) and (P).

Both Section 6 and the related Revised Code sections work in conjunction with the so-called "529 plans," named for the Internal Revenue Code section providing tax benefits for college savings plans. As described by an analyst for the Congressional Research Service:

> 529 plans, named for the section of the tax code which dictates their tax treatment, are tax advantaged investment trusts used to pay for higher-education expenses. The specific tax advantage of a 529 plan is that distributions (i.e., withdrawals) from this savings plan are tax-free if they are used to pay for qualified higher education expenses. If some or all of the distribution is used to pay for nonqualified expenses, then a portion of the distribution is taxable, and may also be subject to a 10 percent penalty tax.
>
> Generally, a contributor, often a parent, establishes an account in a 529 plan for a designated beneficiary, often their child. Upon establishment of a 529 account, an account owner, who maintains ownership and control of the account, must also be designated. In many cases the parent who establishes the account for their child also names [him or herself] as the account owner.
>
> According to federal law, payments to 529 accounts must be made in cash using after-tax dollars. Hence, contributions to 529 plans are not tax-deductible to the contributor. The contributor and designated beneficiary cannot direct the investments of the account, and the assets in the account cannot be used as a security for a loan. A contributor can establish multiple accounts in different states for the same beneficiary. Contributors are not limited to how much they can contribute based on their income. Similarly, beneficiaries are not limited to how much they can receive based on their income. However, each 529 plan has established an overall lifetime limit on the amount that can be contributed to an account, with contribution limits ranging from $250,000 to nearly $400,000 per beneficiary. [Citations omitted.][1]

Since their implementation in the early 1990s, 529 plans have grown to represent $253.2 billion in investments nationwide, with the average account size now hovering at $20,000.[2] Ohio plan data indicate that, as of December 2015, over a half million accounts are open, with over $9 billion in assets:[3]

Plan	Assets Under Management	Open Accounts
CollegeAdvantage 529 Savings Plan (guaranteed)[4]	$340,966,665	34,275
CollegeAdvantage 529 Savings Plan (direct)[5]	$4,318,805,309	266,370
CollegeAdvantage 529 (advisor)[6]	$4,631,704,946	339,962
Total	$9,291,476,920	640,607

Section 6 was successfully proposed to voters as Issue 3 on the November 1994 ballot. Its purpose, as described on the ballot, was to "increase opportunities to the residents of the State of Ohio for higher education and to encourage Ohio families to save ahead to better afford higher education." The proposed amendment was projected to:

1. Allow the state to maintain a program for the sale of tuition credits whereby the proceeds of such credits purchased for the benefit of state residents are guaranteed by the state to cover a specified amount when applied to the cost of tuition at any state institution of higher education and the same or a different amount when applied to the cost of tuition at any other higher education institution as may be provided by law.

2. * * * [R]equire that tuition credits paid from the tuition credits program and the Ohio tuition trust fund be supported by the full faith and credit of the state of Ohio and require the passage of laws for the conduct of the tuition credits program consistent with this amendment.

3. Require the General Assembly to appropriate money to offset any deficiency in the Ohio tuition trust fund to guarantee the payment of the full amount of any tuition payment or refund required by a tuition payment contract, and allow a majority of the members of each house of the General Assembly to appropriate funds for the payment of any tuition payment contract previously entered into.

4. Require that all Ohio tuition trust fund assets be used for the purpose of the fund, and if the fund is liquidated, require that any remaining assets be transferred to the general revenue fund of the state.[7]

Amendments, Proposed Amendments, and Other Review

Section 6 has not been amended or reviewed since its adoption in 1994.

Litigation Involving the Provision

There has been no litigation concerning Article VI, Section 6.

Presentations and Resources Considered

Gorrell Presentation

On April 14, 2016, Timothy Gorrell, executive director of the Ohio Tuition Trust Authority (OTTA), presented to the committee on Ohio's tuition savings program. Mr. Gorrell said his agency is part of the Department of Higher Education and is charged with responsibility for administering the tuition credits program set forth in Article VI, Section 6.

According to Mr. Gorrell, the OTTA originally was created in 1989 under R.C. Chapter 3334, with the purpose of helping families save for higher education expenses. He described that, in November 1994, Ohio voters approved State Issue 3, a constitutional amendment that provided the state's full faith and credit backing for the Ohio Prepaid Tuition Program (now known as the Guaranteed Savings Plan), and to clarify the federal tax treatment of that plan.

Mr. Gorrell said in 1996, section 529 was added to the Federal Internal Revenue Code to provide a federal tax-advantaged way to save for college education expenses. Then, in 2000, the Ohio General Assembly authorized Ohio to offer variable savings plans, as well as allowing a state tax benefit by which Ohio residents can deduct up to $2,000 a year, per beneficiary, from their Ohio taxable income.

In December 2003 the Guaranteed Savings Plan was closed to contributions and new enrollments in response to rapidly rising tuition costs and investment pressures due to the market environment, said Mr. Gorrell.[8] Then, in 2009, existing legislation was changed to place OTTA under the Department of Higher Education, with the role of OTTA's 11-member board being limited to a fiduciary duty over the investments in OTTA's college savings plans.

Mr. Gorrell described OTTA as a "non-General Revenue Fund, self-funded agency," with all of its operating expenses being funded through account fees paid by CollegeAdvantage Program account owners.

Mr. Gorrell said OTTA currently sponsors three plans under the CollegeAdvantage 529 College Savings Program: the CollegeAdvantage Direct 529 Savings Plan, the CollegeAdvantage Advisor 529 Savings Plan offered through BlackRock, and the CollegeAdvantage Guaranteed 529 Savings Plan, which is closed to new investments. He said funds invested in these plans may be used at any accredited college or university in the country, as well as at trade schools and for other education programs that are eligible to participate in federal financial aid programs. According to Mr. Gorrell, across the three plans, OTTA directly manages or oversees over 641,000 accounts and $9.4 billion in assets as of March 31, 2016.

Mr. Gorrell further explained that, in November 1994, by adopting Article VI, Section 6, Ohio voters approved providing the Guaranteed Savings Plan with the full faith and credit backing of the state, meaning that, if assets are not sufficient to cover Guaranteed Savings Plan liabilities, the Ohio General Assembly will appropriate money to offset the deficiency.

Mr. Gorrell also indicated that OTTA has the responsibility to generate investment returns on assets to match any growth in tuition obligations, noting that, currently, OTTA has sufficient assets on a cash basis to meet the payout obligations of the existing tuition units and credits held by account owners.

Mr. Gorrell said OTTA does not recommend any changes to Article VI, Section 6. He noted that a federal tax goal of the section was intended to address a period of unsettled case law that created uncertainty as to whether similar prepaid tuition programs were exempt from federal taxation. He said that uncertainty has been resolved by the codification of Internal Revenue Code section 529, rendering the constitutional provision unnecessary to clarify the federal tax treatment of such plans.

Discussion and Consideration

In considering whether to recommend a change to Article VI, Section 6, the committee was persuaded by Mr. Gorrell's testimony indicating that, while one goal of the provision was to

clarify federal tax treatment of the Guaranteed Savings Plan, a purpose that became obsolete with the federal enactment of Internal Revenue Code section 529, the constitutional provision's other purpose, to establish the full faith and credit backing of the state for the Guaranteed Savings Plan, remains viable. The committee agreed with Mr. Gorrell that, although no new Guaranteed Savings Plan account holders have been added since 2003, the fact that some accounts are still active may require the constitutional provision to be retained in its current form.

Thus, the committee was reluctant to alter or repeal Article VI, Section 6, although a future constitutional review panel may conclude there is no justification for retaining the section because all accounts have been paid out.

Conclusion

The Education, Public Institutions, and Local Government Committee concludes that Article VI, Section 6 should be retained in its current form.

Date Issued

After formal consideration by the Education, Public Institutions, and Local Government Committee on September 8, 2016, the committee voted to issue this report and recommendation on _____.

Endnotes

[1] Margot L. Crandall-Hollick, Tax-Preferred College Savings Plans: An Introduction to 529 Plans, (Washington, D.C.: Congressional Research Serv. 2015), http://fas.org/sgp/crs/misc/R42807.pdf (last visited June 14, 2016).

[2] "529 Plan Data," College Savings Plans Network, available at: http://www.collegesavings.org/529-plan-data/ (last visited June 15, 2016).

[3] 529 Plan Data, Reporting Date Dec. 31, 2015, College Savings Plans Network. Available at: http://www.collegesavings.org/wp-content/uploads/2015/09/Dec-2015.pdf (last visited June 15, 2016).

[4] A "guaranteed savings fund" is defined in the Ohio Administrative Code as: "those accounts in the Ohio college savings program, whether containing tuition credits and/or tuition units, which have the financial backing through the full faith and credit of the state of Ohio as more specifically set forth in Section 6 of Article VI, Ohio Constitution." Ohio Admin.Code 3334-1-01(G).

[5] A direct plan is defined as one in which the investor directly contracts with the company managing the plan. *See,* https://www.collegeadvantage.com/docs/default-source/stand-alone-documents/otta_decisiontree_02_cr(1).pdf?sfvrsn=4 (last visited June 24, 2016).

[6] An "advisor" plan is one in which the investor has purchased the plan through a financial advisor or broker-dealer who, in turn, facilitates the investment with the company managing the plan. *See, id.*

[7] Toledo *Blade*, Oct. 25, 1994, at p. 7, https://news.google.com/newspapers?id=qUYxAAAAIBAJ&sjid=fQMEAAAAIBAJ&pg=6086,7819623&hl=en (last visited June 14, 2016).

[8] According to the Legislative Service Commission, the suspension of the Guaranteed Savings Plan resulted from an actuarial deficit that was "initially caused largely by the combination of the downturn in the economy and the stock market, and the large increases in tuitions at Ohio's public colleges and universities after the removal of the tuition caps in FY 2002 and FY 2003." LSC Greenbook, Analysis of the Enacted Budget, Department of Higher Education (August 2015), p. 42. Available at: http://www.lsc.ohio.gov/fiscal/greenbooks131/bor.pdf (last visited June 24, 2016).

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

TO: **Chair Chad Readler, Vice-chair Ed Gilbert, and Members of the Education, Public Institutions, and Local Government Committee**

CC: **Steven C. Hollon, Executive Director**

FROM: **Shari L. O'Neill, Counsel to the Commission**

DATE: **August 23, 2016**

RE: **Article VII (Public Institutions) at the 1851 Constitutional Convention**

To assist the Education, Public Institutions, and Local Government Committee in its review of Article VII (Public Institutions), staff is providing this summary and analysis of the discussion of delegates to the 1851 Constitutional Convention, at which Sections 1 through 3 of Article VII were proposed.[1] A table identifying the participating delegates is provided at Attachment A, and an excerpt of the proceedings is provided at Attachment B.

In addressing the topic of public institutions, the delegates were plowing new ground: no similar article or provisions were a part of the 1802 Constitution. While one apparent goal was to express support and provide for "benevolent institutions," understood as facilities for persons with diminished mental capacity as well as for the blind and deaf, the greater portion of the discussion centered on the governance of the state correctional system, the purposes of incarceration, and the operation of prison facilities and prison labor programs.

The Proceedings of the 1850-51 Constitutional Convention

Commencing the convention's treatment of the subject of public institutions, Joseph Vance, a delegate from Champaign County, moved to adopt the following language for Article VII, Sections 1 and 2:

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[1] The discussion, in full, may be found in Ohio Convention Debates, pages 539-49, available at http://quod.lib.umich.edu/m/moa/aey0639.0002.001?view=toc (last visited Aug. 23, 2016).

> Section 1:
>
> The Institutions for the benefit of these classes of the inhabitants of the State who are deprived of reason, or any of the senses, shall always be fostered and supported by the State, and be regulated by law so as to be open to all classes alike, subject only to reasonable restrictions.[2]
>
> Section 2:
>
> The Directors of the Penitentiary, and the Trustees of the Benevolent Institutions, now elected by the General Assembly of the State, with such others as may be hereafter created by subsequent Legislative enactment shall, under this constitution, be appointed by the Governor, by and with the advice and consent of the Senate.[3]

Competing Roles of the Legislature, the Governor, and the Voters

Addressing this proposal, delegates immediately focused on whether directors of the penitentiary should be selected by the General Assembly, appointed by the governor, or directly elected by voters. Some delegates supported allowing the General Assembly to make this determination. Others expressed that the rationale given for involving the governor – that the General Assembly had become unpopular – was not supported by fact, and, in any event, was not sufficient justification to have voters approve "every small office in the state."[4]

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[2] Currently, Section 1 reads: "Institutions for the benefit of the insane, blind, and deaf and dumb, shall always be fostered and supported by the state; and be subject to such regulations as may be prescribed by the General Assembly."

[3] Currently, Section 2 reads: "The directors of the penitentiary shall be appointed or elected in such manner as the General Assembly may direct; and the trustees of the benevolent, and other state institutions, now elected by the General Assembly, and of such other state institutions, as may be hereafter created, shall be appointed by the governor, by and with the advice and consent of the Senate; and upon all nominations made by the governor, the question shall be taken by yeas and nays, and entered upon the journals of the Senate."

[4] Edward Archbold of Monroe County, Ohio Convention Debates, *supra*, Sat. June 22, 1841 (pp. 540-41). Archbold added:

> What evidence [supports] that the general assembly has become unpopular? No such sentiments exist among the substantial yeomanry of the country, nor anywhere else, except among bar-room politicians and newspaper editors. These last will always employ the foulest language to abuse their political opponents. They set no bounds to the license of the press; the best and purest men of the opposite parties are always painted in the color of fools and fiends. But does anybody believe their inflated paragraphs? Does not everybody know that it is a struggle between the *ins* and *outs*? –a mere attempt to degrade political opponents? Yet these things are taken as 'sources of public opinion!' If public opinion had no healthier sources, the commonwealth would soon die of a plague.

Other delegates expressed that the importance of the role of directors of the penitentiary meant they should be elected, with one delegate, Daniel A. Robertson of Fairfield County, having previously supported that position in his previous role as a member of the New York Constitutional Convention in 1837, where he advocated the popular election of all public officers.[5] In fact, requiring all state offices to be elective had been a key plank in the platform of reforms advocated by Samuel Medary and others as justification for voting to hold the 1850-51 convention.[6]

Some delegates supported allowing the governor to appoint, with a requirement for obtaining the advice and consent of the Senate as a compromise measure.

Several proposed amendments to the proposals were accepted by the delegates, including a motion to strike out "senses" in Section 1 and insert "institutions for the benefit of the insane, the deaf and dumb, and the blind" on the basis that the word "senses" was too broad. Delegates agreed to remove the words "legislative enactment" in Section 2, substituting the word "law." Finally, delegates agreed to add "and other state institutions" after "benevolent institutions" in Section 2.

Racial Segregation

Discussions throughout the convention had been concerned with issues of race, and the debate about public institutions was no exception. Some delegates, particularly those from the southern part of the state, asserted the proposed language should provide for racially segregated public institutions, while other delegates supported keeping the constitutional language neutral. The racial segregation debate triggered a discussion of whether the institutions should be restricted to Ohio residents, and the feasibility of acknowledging different "classes," defined as "rich and poor." By a vote of 42 to 25, delegates ultimately rejected a motion to insert the word "white" in Section 1.

Prison Labor

The committee devoted significant attention to a proposal by Charles Reemelin of Hamilton County for an additional section "which he considered might as well come in here as any other place." That section would read:

> Each convict hereafter confined in the Penitentiary shall be entitled to the benefit of the net proceeds of his or her labor while so confined, and the General Assembly shall by law provide for the payment of the same in money, to each convict, or to his family, in such manner as may be deemed proper in the premises.

[5] *See* David M. Gold, *Judicial Elections and Judicial Review: Testing the Shugerman Thesis,* 40 Ohio N. L.Rev. 39, 51 (2013).

[6] *See* Barbara A. Terzian, *Ohio's Constitutional Conventions and Constitutions,* in The History of Ohio Law 40, 52 (Michael Les Benedict and John F. Winkler, eds., 2004).

Reemelin argued that failing to compensate prisoners for their labor results in recidivism when, upon gaining their liberty, ex-convicts have insufficient funds to provide for themselves and their families.

The delegates then discussed the purposes of incarceration, with some delegates recognizing that confinement allows for reformation, that prison labor has a rehabilitative role, and that there is justice in allowing the convict to retain at least some of the proceeds of his labor.

In the end, Reemelin's motion failed.[7]

Senate Approval of Gubernatorial Appointments

Delegates then returned to the issue of how directors should be selected. G.J. Smith, a Warren County attorney, offered an amendment that would add at the close of Section 2 the words "and the question upon all nominations made by the governor shall be taken by years and nays and entered upon the journal of the senate," which delegates approved.

D.P. Leadbetter, a Holmes County farmer, then proposed Section 3 to address how vacancies would be filled, as follows:

> Section 3:
>
> The governor shall have power to fill all vacancies that may occur in the offices created by this article of the Constitution, until their successor in office shall be elected and qualified, or until the meeting of the ensuing legislature, and the successor confirmed and qualified.[8]

This proposal was adopted, and the committee reported all three sections back to the convention.

Analysis of the Debate

These discussions resulted in provisions that assigned roles to the General Assembly and the governor in selecting penitentiary and benevolent institution directors, defined persons in need of care as being "insane, blind, and deaf and dumb," and provided a procedure for filling director vacancies in penitentiaries and benevolent institutions. While a significant portion of the discussion dealt with the purposes of incarceration and compensation for prison labor, these topics did not culminate in a recommendation.

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[7] However, the 1912 Convention resulted in the adoption of Article II, Section 41, which, as amended in 1978, allows the General Assembly to pass laws "providing for and regulating the occupation and employment of prisoners" in state penal institutions.

[8] Currently, Section 3 provides: The governor shall have power to fill all vacancies that may occur in the offices aforesaid, until the next session of the General Assembly, and, until a successor to his appointee shall be confirmed and qualified.

Upon final adoption, the proposals for Sections 1 through 3 of Article VII were changed from what was originally proposed as follows:

Section 1

- As adopted, Section 1 specifies that the institutions being referenced are specifically for the "insane, blind, and deaf and dumb," rather than more generally to those "deprived of reason, or any of the senses."
- Section 1 drops the reference to "classes of the inhabitants of the State," instead suggesting the institutions would be more generally available (albeit subject to statutory regulations).
- Section 1 does not reference "reasonable restrictions," rather delegating the authority to enact legislation regulating the institutions.

Section 2

- As adopted, Section 2 provides that the directors of the penitentiary will be selected according to statute, whereas the originally proposed version prescribed that the governor would appoint them.
- Section 2 also indicates that the trustees of benevolent and other state institutions "now elected by the General Assembly," and the trustees of other institutions statutorily created in the future, will be appointed by the governor, with Senate approval. In contrast, the original version rendered all of these offices subject to gubernatorial appointment.

Section 3

- As adopted, Section 3 substitutes the originally proposed phrase "created by this article of the Constitution," with the word "aforesaid."
- The order of references to the session of the General Assembly and to the successor in office has been switched.
- The reference to the "meeting of the ensuing legislature" has been replaced with the "next session of the General Assembly."

Section 1 reads more as a policy statement, intended to express the state's support for penal and benevolent institutions, and to encourage the General Assembly to regulate those institutions. Although Sections 2 and 3 may seem overly concerned with how the officers of the institutions are selected, in 1850-51, a concern about legislative overreaching, as well as a related desire to elevate the role of the voter, heightened delegates' interest in the topic.[9] Indeed, a large part of

[9] As Steinglass and Scarselli note: "Over the course of five decades under the first constitution * * * the people began to see the legislature as the source of many, if not most, of the problems of government, and the new constitution reflected this general distrust of legislative power. * * * [T]he new constitution took the appointment power away from the General Assembly. All key executive branch officers became elected officials, as did all judges." Steven H. Steinglass and Gino J. Scarselli, *The Ohio State Constitution* 35 (2nd prtg. 2011).

the delegates' discussion about public institutions centered on which branch of government should control and regulate these institutions.

Aside from expressing general support for public institutions, delegates' primary goal seems to have been to address the election-versus-appointment issue. The meandering discussion allowed delegates to express opinions on crime and punishment, racial segregation, and political power, but the discourse never ripened into a substantive policy statement or consensus for an approved recommendation. While one delegate attempted to expand the concept of "public institutions" to include a provision related to prison labor, his proposal was rejected. No other delegate appears to have attempted to propose a new amendment.

Statutory Law

Article VII, Section 2 references "directors of the penitentiary" but does not create that role. The phrasing of Article VII, Section 2 suggests that the referenced positions already exist. Thus, its primary purpose, as well as that of Section 3, is not to create the roles but to describe how the roles are to be filled.

Under current statutory law, the director of the department of rehabilitation and correction is one of the statutory department head roles identified in R.C. 121.03, at subsection (Q). R.C. Chapter 5120 relates to the Department of Rehabilitation and Correction, providing under R.C. 5120.01 that the director is the executive head of the department who has the power to prescribe rules and regulations, and who holds legal custody of inmates committed to the department.

In relation to Section 3, R.C. 3.03 provides specific instructions for the governor's exercise of the power to appoint to fill a vacancy in office, with the advice and consent of the Senate.[10]

While R.C. Chapter 5145 generally concerns "the penitentiary," its current focus is on details related to managing the prison population, rather than the role of the director of the penitentiary.

[10] R.C. 3.03 provides:

> When a vacancy in an office filled by appointment of the governor, with the advice and consent of the senate, occurs by expiration of term or otherwise during a regular session of the senate, the governor shall appoint a person to fill such vacancy and forthwith report such appointment to the senate. If such vacancy occurs when the senate is not in session, and no appointment has been made and confirmed in anticipation of such vacancy, the governor shall fill the vacancy and report the appointment to the next regular session of the senate, and, if the senate advises and consents thereto, such appointee shall hold the office for the full term, otherwise a new appointment shall be made. A person appointed by the governor when the senate is not in session or on or after the convening of the first regular session and more than ten days before the adjournment sine die of the second regular session to fill an office for which a fixed term expires or a vacancy otherwise occurs is considered qualified to fill such office until the senate before the adjournment sine die of its second regular session acts or fails to act upon such appointment pursuant to section 21 of Article III, Ohio Constitution.

Questions for Consideration

1. Given the General Assembly's plenary power to regulate state correctional and other institutions, is Section 1's statement assigning regulatory power to the legislature necessary?

2. Is there a public policy basis for retaining Section 1's statement favoring state institutions for the disabled?

3. Do Sections 2 and 3 have a current purpose or function?

4. Is Article VII necessary? Could the constitution be reorganized to insert sections from other articles of the constitution into Article VII?

Conclusion

It is hoped that this memorandum sheds light on the history of Article VII. Should further research be needed, staff will be pleased to assist.

Attachment A

The following delegates participated in the debate regarding Public Institutions at the 1851 Convention:

Delegate	County	Occupation
Edward Archbold	Monroe	Lawyer
Alden Bennett	Tuscarawas	Physician
L. Case	Licking	Lawyer
Richard Cahill	Crawford	Farmer
David Chambers	Muskingum	Farmer
John Graham	Franklin	Surveyor
William Hawkins	Morgan	Miscellaneous
James Henderson	Richland	Physician
Peter Hitchcock	Geauga	Lawyer
George Holt	Montgomery	Lawyer and Farmer
John Hunt	Lucas	Merchant
James King	Butler	Farmer
S.J. Kirkwood	Richland	Lawyer
Thomas Larsh	Preble	Surveyor
John Larwill	Wayne	Merchant
D.P. Leadbetter	Holmes	Farmer
John Lidey	Perry	Farmer
James Loudon	Brown	Farmer
H.S. Manon	Licking	Farmer
M.H. Mitchell	Knox	Lawyer
Ranney, R.P.	Trumbull	Lawyer
Charles Reemelin	Hamilton	Farmer
A.N. Riddle	Hamilton	Surveyor
Daniel A. Robertson	Fairfield	
William Sawyer	Auglaize	Blacksmith
Smith, G.J.	Warren	Attorney
Smith, B.P.	Wyandot	Attorney
James Struble	Hamilton	Farmer
James Taylor	Erie	Editor
Vance, Joseph	Champaign	Farmer
Thomas Way	Monroe	Farmer
E.B. Woodbury	Ashtabula	Attorney

Mr. HITCHCOCK of Geauga moved that the committee of the whole be discharged from further consideration of the special report of the committee on the Judicial Department relative to the impeachment of certain Judicial officers, which was agreed to.

Mr. REEMELIN moved that the report be laid upon the table, which was agreed to.

Mr. CAHILL moved that the committee of the whole be discharged from the further consideration of the resolutions, relative to incorporating certain provisions in the Preamble and Bill of Rights, which was agreed to.

The resolutions were referred, upon his motion, to the committee on the Preamble and the Bill of Rights.

Mr. REEMELIN moved that the committee of the whole be discharged from further consideration of the resolution offered by Mr. LARSH, on the 14th of May, which provides, that the Secretary of State, or some other State officer, shall preside over the House of Representatives until a speaker is elected, which was agreed to.

The resolution, upon motion of the same gentleman, was laid upon the table.

Mr. BENNET moved that the committee of the whole be discharged from the farther consideration of the resolution offered by him on the 14h of May, recommending that under the new constitution, a majority of either branch of the General Assembly, shall constitute a quorum, which was agreed to.

The resolution, upon motion of the same gentleman, was laid upon the table.

Mr. REEMELIN moved that the committee of the whole be discharged from the further consideration of the resolution offered by Mr. HOOTMAN, relative to banks and banking, which was agreed to.

The resolutions, upon motion of the same gentleman, were referred to the committee on Banking and Currency.

Mr. REEMELIN moved that the committee of the whole be discharged from the further consideration of the resolution of Mr. PERKINS, on the subject of capital punishment, which was agreed to.

The resolution, upon motion of Mr. ROBERTSON, was laid on the table.

Mr. REEMELIN moved that the committee of the Whole be discharged from the further consideration of resolution number seven, which was agreed to.

The resolution, upon motion of the same gentleman, was laid upon the table.

Mr. STANBERY offered the following resolution, which was agreed to.

"*Resolved*, That the use of this chamber be and is hereby granted to Captain George L. Colburn for the purpose of delivering an address upon the subject of temperance, this evening at 8 o'clock."

Upon motion of Mr. VANCE of Champaign, the Convention resolved itself into a committee of the Whole, which was agreed to and Mr. GREEN of Ross being called to the chair,

Mr. KENON moved to take up the report number one of the standing committee on

THE JUDICIAL DEPARTMENT.

Mr. RANNEY. I wish to make a suggestion upon that subject. I would state that one of the members of the committee who did not sign the report is now absent. I would suggest to the committee whether it would not be right to delay the matter until Monday. I do not suppose that it will delay the action of the Convention to any extent, as there are reports upon which we can act.

Mr. LARSH. I hope the motion to take up the report will not prevail, as it is only a few days since the committee reported. We want time enough for the report to be circulated, so that we may receive instruction upon the subject from our constituents.

Mr. KENON withdrew his motion and then the report on

PUBLIC INSTITUTIONS.

was taken up, on motion of Mr. VANCE of Champaign

SEC. 1. The Institutions for the benefit of these classes of the inhabitants of the State who are deprived of reason, or any of the senses, shall always be fostered and supported by the State, and be regulated by law so as to be open to all classes alike, subject only to reasonable restrictions.

SEC. 2. The Directors of the Penitentiary, and the Trustees of the Benevolent Institutions, now elected by the General Assembly of the State, with such others as may be hereafter created by subsequent Legislative enactment shall, under this constitution, be appointed by the Governor, by and with the advice and consent of the Senate.

JOSEPH VANCE,
JAS. B. KING,
THOMAS A. WAY,
JAMES STRUBLE,
JOHN GRAHAM.

The same gentleman remarked that as there were no objections to the second section, he would move that the committee rise and report.

Mr. RIDDLE. I do not know as I have any objections to the second section, but for the purpose of hearing the committee upon this subject I propose to strike out the second section. (Laughter.)

Mr. VANCE of Champaign. For the purpose of hearing from the gentleman, I should like to hear what he has in opposition to it. (Laughter.)

Mr. RIDDLE. Mr. Chairman, there is a new mode of electing trustees of benevolent institutions, which we so much glory in, and which we have heard so much spoken of not only in the city of Columbus but elsewhere. I see, sir, that by the report the trustees of these humane institutions are to be appointed in a way altogether different from what we have been accustomed to in Ohio: to be appointed by the Governor, with the advice and consent of the Senate. For the purpose of giving some reasons why this new mode should be adopted, the gentleman ought not to be astonished that a motion to amend this section should be made. I have no doubt the intelligence of the committee will be able to give good reasons; and although I dislike to enter upon the old hobby, which has been so much discussed—the subject of annual or biennial sessions,—yet the Senate might not be in session when these appointments are to be made. The Senate, I presume, will not be in session oftner than once in two years, in the event of the Convention adopting the biennial system. For the purpose of hearing some reasons why this mode would be preferable to the old one, I thought it proper to make the motion.

Mr. SMITH of Wyandot moved to amend by striking out the words "under this constitution," in the third line; which was agreed to.

Mr. VANCE of Champaign. I had not supposed that there would be any objections to this mode of appointment. Perhaps there might be some appointing power much more acceptable. But the plan here proposed, has been considered a very safe method for the appointment of similar officers throughout the United States. I believe that the committee were unanimously agreed that these officers should be appointed by the Governor, with the advice of the Senate.

Mr. RANNEY. I hope the motion to strike out will prevail. The first section provides for the fostering of these institutions by law, and I think that the mode by which these officers are to be elected can be safely left to the General Assembly. I am clear in the opinion, that it would be better to have the directors of the Penitentiary elected directly by the people, as is done in the State of New York, and I believe in Pensylvania. The Penitentiary has become a very important institution in this State, and will be-

come still more so as the State increases in population. If we should finally adopt the system as it is in New York, I believe it would be a much safer method. I do not know as it would be policy to adopt this plan in the constitution, and therefore, I am willing to leave it with the Legislature. I am perfectly willing that the selection of these officers shall be regulated by law. My opinion is, that we shall finally resort to the method of electing one of the officers every year, by the people. You should recollect that we are fixing a rule in this constitution that shall endure as long as this constitution endures.

Mr. ROBERTSON. I am in favor of electing Directors of the Penitentiary by the people. Within twenty years we shall have, undoubtedly, two or three penitentiaries in this State. The interest connected with the Penitentiary, and the patronage at the disposal of its officers are very great, and for these reasons the Directors ought to be elected by the people. I therefore move to amend the report by striking out in the first line of the section under consideration, these words, "The directors of the Penitentiary," and insert,

"Three Directors of the Penitentiary shall be elected by the people at the first general election after the adoption of this constitution, one for the term of one year, one for the term of two years, and one for the term of three years, and there shall be elected annually thereafter, one director who shall hold his office for three years."

Mr. RIDDLE offered an amendment. After the word "benevolent," in the first line of the section, insert, "and other State," so that it would read, "the trustees of the benevolent and other State institutions," &c.

Mr. SAWYER. It will be observed, that in the thirty-second section of the report of the committee on the Legislative Department, the appointment of all civil officers shall be made in such manner as may be provided for by law. And it appears to me, that this covers the whole ground, and that it is not necessary to have this section entered in the Constitution.

The question being taken upon Mr. RIDDLE's amendment, the same was agreed to by a vote of 41 to 32.

Mr. SAWYER. I move to strike out the whole section as amended. My objection to it is, that the provision in the legislative report, to which I have before referred, covers the whole ground. I admit that the Legislature has become unpopular with the people, and I recollect of hearing in olden times, that the republican party was in favor of leaving a deal of power with the Legislature, and the argument used was, that they came directly from the people. The other party, that was opposed to them, argued in favor of restricting a great many powers of the Legislature, or the people's representatives, from the fact that at that time the Governor of this State, while she was yet under territorial government, was very unpopular with the people—that the Legislature at that time was the popular branch, and the republican party of this country were very much in favor of curtailing the power of the Governor, and to refer all power that they could consistently to the Legislature.

It appears, however, that we are governed by the circumstances which surround us at this day, from the fact that the Legislature for the last four or five years, has become quite unpopular with the people. Thus some persons are endeavoring to curtail the power of the Legislature to a very great extent, and are for trusting some power with the Governor. But as we have passed upon this same subject in the 23d section of the Legislative report, I think it useless and unnecessary to pass such a provision as is here proposed. I do believe it is wrong to burthen the people with the election of these small officers. This may be considered heterodox Democracy, but I believe it, and therefore I dare urge it. The section that I refer to, in the report on the Legislative Deparment, is section 23

There may be a question whether the words "civil officers," will include the officers now under consideration. Without any very great pretensions to understand what is meant by the words "civil officers," in a political sense, I contend that the phrase will include the offices under consideration. I am willing that the Legislature should say, in accordance with this section, that the Governor shall appoint these officers. One thing is a fixed fact. In this section of the constitution it is fixed, that the officers shall not be elected by the Legislature. The Legislature, however, may determine; if it appears good policy after trying experiments under this constitution, of electing numerous officers we have now placed before them. If they shal hereafter determine to send to the people themselves, the election of Directors of the Penitentiary, let them do it. After the experiment is made, they find that they are already burthened with an immense number of officers, let them refer the same to the Governor, to be appointed by him and confirmed by the Senate. I believe that the section in the report on the Legislative Department covers the whole ground, and I think it will prove more satisfactory to the people.

Mr. ARCHBOLD. I hoped that this section would be no farther mutilated. I was satisfied with it as it came from the hands of the committee. Coming, as it did, from the Hamilton and Butler delegations, assisted by my worthy colleague from Monroe, (Mr. WAY,) I thought it might be relied on as sufficiently popular. We shall be compelled to vest in our governor some power of nomination for the smaller and less important offices. We cannot call upon the entire population of this great State, to elect every subordinate clerk, or lock-tender, or collector of tolls, or receiver of public monies along the canals, and in our land offices. The labor of the elections would be immense, the book of the people's duties would be like that vast volume which so fully exercised the patience of the reader, that when he came to page 55,156 in the history he concluded he would skip a parcel and get down to the "flood." (Great laughter.) To fix up such extensive machinery for so small an object would be the same mistake in politics, as to fix a spit as large as a ten acre field to roast a shoulder of mutton. The people at large could never perform the labor of examination and investigation necessary to an intelligent choice of all these subordinates. In the rage for popular notions the people are likely to fare like the girl who betrayed her native town to the Roman armies—she showed them the gates and demanded her reward; she requested the shining metal which they wore upon their left arms, (alluding to the brass of their shields;) the soldiers threw their shields upon her, she was overwhelmed and smothered beneath the weight of their gifts. I repeat we shall be compelled to vest the power of nomination to some of the subordinate places, in the Governor, and if so, we must vest the power of confirmation in the Senate, for the people will never consent to grant an individual the power to fill so many places without their agency, and if their agency is to be exerted at all, it can be best exerted through their representation in the Senate, which will be a small and compact body and well adapted to the performance of such duties.

The gentleman from Auglaize [Mr. SAWYER] asserts that the General Assembly has become very unpopular among the people during the last four years. It seems to me that my friend does himself gross injustice in making such a declaration. I cannot but regard it as a piece of inadvertence. What evidence has the gentleman that the General Assembly has become un-

popular? No such sentiments exist among the substantial yeomanry of the country, nor anywhere else, except among bar-room politicians and newspaper editors. (Laughter.) These last will always employ the foulest language to abuse their political opponents. They set no bounds to the license of the press; the best and purest men of the opposite parties are always painted in the color of fools and fiends. But does anybody believe their inflated paragraphs? Does not everybody know that it is a struggle between the ins and outs?—a mere attempt to degrade political opponents? Yet these things are taken as "sources of public opinion!" If public opinion had no healthier sources, the commonwealth would soon die of a plague. (Much merriment.)

Surely if my worthy friend from Auglaize, for whom I entertain high and sincere respect, will give his judgment fair play for a little while—will give the matter a little cool reflection, he will be very cautious about repeating such sentiments. The only possible mode of expressing the popular will is, by representation in a General Assembly. That Assembly is a mere abridgement—a miniature people consisting of such numbers as to make it convenient for popular discussion, deliberation, investigation and debate. It will not consist of knaves and fools, unless the people themselves are too ignorant and too stupid to choose good men. To throw wholesale aspersions therefore on the popular representation, is to impeach the intelligence and virtue of the people themselves. That representation will infallibly give back as true a likeness of the people as the looking-glass does of a man standing before it.

There are only two schemes of government—the one arbitrary and void of any effective agency of the people, the other consisting essentially of that agency—which can never be exerted except by means of popular representation. The friends of monarchy will therefore exult to hear that the people are not capable of selecting respectable delegates. The system of monarchy and the system of popular representation are antagonistical, and the humiliation of the one is the triumph of the other.

I repeat, I should have been willing to vote for the section as it originally stood. The scheme of nomination and confirmation, by the Governor and Senate, of all the officers about our prisons, is, surely, as democratical as the plan of electing three directors by the people at large, and then giving the appointment of all the subordinates into their arbitrary control. But the authority of New York is brought to bear upon me. It appears that the scheme of electing these three directors, and giving into their hands an immense list of patronage, has found its way into the constitution of New York, and it is not for an Ohio man to resist a proposition backed by such authority! When that great State, with its lordly manors and twelve years' leases—its anti-rentism—its mobs and its murders of sheriffs and constables (laughter)—is brought to bear upon me, I surrender at discretion!! (Renewed laughter.)

Mr. RANNEY. I had hoped that at least we would consider something here, without having up the eternal subject in relation to the purity of past Legislatures—whether it is democratic or anti-democratic. I have lived long enough in the world to have opinions of my own, which I shall conform to regardless of dictation from any quarter.

The gentleman from Monroe (Mr. ARCHBOLD) underrates the importance of these Directors of the Penitentiary, and makes a great complaint about the election of these officers by the people. I did not hear the gentleman make any complaints when we proposed to elect a Secretary of State and other officers in this mode—and is not the selection of Director of the Penitentiary as important as that of Secretary of State, a mere ministerial officer? If the gentleman's logic will apply to one case, why will it not to the other? Why should he object to the election by the people, of officers having in their hands, in some measure, the destiny, the happiness and safety of 500 human beings, soon to be increased to the number of a thousand, when the State shall have increased its population? These Directors, too, have the appointment of a large number of individuals, to responsible and arduous trusts connected with such an extensive establishment.—How much power the Directors shall have hereafter, is matter for legislation. There are committed to them now, some of the most important trusts in this State. The most important of them all, is, to deal with the unfortunate beings committed to their charge, as will best subserve the object of all punishment, the prevention of crime hereafter, and the reformation of the offenders. On account of the importance of these officers, and especially considering the large patronage that is committed to them, and controlling so large pecuniary interest extending all over the State, it is desirable that their selection should be placed in the hands of the people. I believe that there are no more important offices to be filled in the State, than those connected with the Penitentiary, when we consider that the exercise of their official functions extends all over the State, affecting all its inhabitants, more or less, directly or indirectly, and especially those engaged in mechanical labor—when we consider, too, the vast amount of patronage which they have to bestow, and the large pecuniary interests which they have under their control, without saying anything upon the question of democracy or anti-democracy, which have been inappropriately dragged into the debate.

I regard the appointment of these officers, as one of the most important in the State. In respect to the great institution—the Penitentiary—by which the penal law is made effectual, and where the reformation and improvement of its inmates is so dependent upon the character of its officers. I do really hope, that the tocsin of party legislation and tyranny will not be blown over us any more. The important duties which are committed to them, affecting as they do all the people of the State, in my humble judgment, render the people best qualified for the selection of these officers. Let me say here, that if you commit this duty of the selection of these officers to the General Assembly, or the Governor, you leave it more than ordinarily open to those influences that ever attend the appointing power. Around the Warden, there are a large number of men hanging upon him, a numerous army, who are capable of exerting a great influence. The appointing power, is therefore, with the very best intentions, liable to be misled, through the appliances which may be brought to bear through the influence of such an army of men; and for these reasons I am for placing the selection of these officers in the hands of the people and beyond the reach of these influences, and shall vote against striking out as now amended. I was at the outset willing to leave it to the Legislature, but as the section has been so amended as to meet my views, I am in favor of retaining it, as a part of the constitution.

Mr. ROBERTSON. I regret exceedingly that the gentleman from Auglaize (Mr. SAWYER) has said anything about the Legislature, for I fear that his remarks on that subject have had the effect of depriving the friends of the section, as amended, of the support of the gentleman from Monroe, (Mr. ARCHBOLD,) who, I believe, was in favor of my amendment. It is now moved to strike out the whole section, as amended. I hope the motion will not prevail, for I consider the election of directors of the Penitentiary by the people as very important. The citizens—especially the me-

chanics—of the State feel a great interest in all matters connected with the government and affairs of the Penitentiary. The gentleman from Auglaize feels reluctant to impose upon the people the burthen of electing so many State officers. Let me tell the gentleman that the people are always ready to receive such burthens; and it will require no increased labor to elect these three directors, in addition to the other officers to be elected.

The people would like to be entrusted with the election of more public officers than at present. They would like to elect their Post Master, whom they now often nominate by a popular vote of that portion of the administration party interested. The patronage of the Penitentiary is controlled entirely by the directors, and this patronage is very great. That is one reason why the people ought to elect these officers. I am not willing to confide the control of all this patronage in the hands of the executive of the State. It is better to let the people elect officers directly, and exclusively charged in the administering the affairs of this institution. Every year the importance of committing this power to the people will increase, because every year the population will increase—the business of the Penitentiary will increase, and consequently the political importance of its patronage. Why, sir, we have lately had quite an excitement occasioned by the removal of the physician of the Penitentiary by the directors, for political reasons only. These directors were appointed by the Legislature, and it is proposed by this report to give that power to the Governor. It may not be right that there should be any party influence in the administration of the affairs of the Penitentiary, but whether the physicians and other officers of that institution are to be influenced by party considerations or not, let the citizens of the State determine by a direct vote.

Mr. HUNT moved to amend in the third line, section second, by striking out the words "legislative enactment" and insert the word "law," which was agreed to.

Mr. MITCHELL. I have a word to say about entrusting the people with the election of these officers. I have not that fear about the matter which some gentlemen seem to have. I regard it as one of the greatest objects to be accomplished in all governments, and especially to be adopted in a republican government, to fit the people for the duties they have to discharge. The most important duty to be discharged in any republican government is the selection of appropriate and well qualified officers. Now, sir, in order to enable the people faithfully and intelligently to discharge that duty is a most important requisite—that they should be extensively acquainted with their fellow-men, and the diversities of their character and disposition. The choice and selection of numerous officers are only additional inducements for them to pursue the study of human character, and to make themselves adepts in the knowledge of their fellow-men. Now as to the appointment of these officers by the Legislature and by the Governor, I am opposed to both. I am not in favor of allowing to these officers, or to the Governor, any such patronage. My doctrine is this: That the people shall select all the important officers. My plan would be to give to the people of any particular locality, or district, who are to be benefited or injured by the faithful or unfaithful discharge of duty, the selection of all their officers. This would give to the State at large the selection of all general officers and all heads of departments. Making the latter responsible for the faithful discharge of all the duties committed to them. They should, therefore, be invested with the power of selecting their assistants, and all the subordinates should be chosen by the heads of the departments. But, by no means would I give to the Governor or Legislature either patronage or suffrage other than as above indicated.

Mr. KING of Butler said that he could not see that there is any public interest to subserve by filling the offices in question by popular election. Part of the responsibility of the management of these institutions falls upon the General Assembly, and he did not see why that body should not have an agency of some kind in selecting their managers. Our public institutions are well said to be the glory of the State, and require in those who are to fill the duties of conducting them, peculiar qualifications, of which the people are not always the best judges. He desired to give to one branch of the General Assembly an instrumentality in the matter. He preferred that the Senate should participate in the appointment, as he thought the people would have more confidence in such appointment than if it were made by the Governor alone. He believed that, in regard to the election of Directors of the Penitentiary, it would be well enough to have them elected by the people.

Mr. HOLT moved to amend the amendment by striking out the words, "by the General Assembly on joint ballot;" which was lost.

The question then being on the amendment, the same was disagreed to.

The question then turned upon the motion to strike out the section which was lost.

Mr. BENNETT moved to amend the first section, by striking out its commencement, to the word "senses," inclusive, and insert the following—"institutions for the benefit of the insane, the deaf and dumb, and the blind." He did not suppose that the committee intended to convey the idea that asylums might be provided for persons who had lost the sense of smelling, taste, &c.; though the terms employed would seem to convey the idea. He thought the amendment made that definite which otherwise was not so, and still leaves the section to include all the committee designed to imply.

Mr. HAWKINS was disposed to preserve the section as it is. He did not see the necessity for the amendment.

Mr. KING moved to insert the word "white" in the first section.

Mr. STRUBLE inquired if the gentleman intended to exclude negroes and mulattoes from the benefit of the penitentiary.

A Voice. That would be too bad.

Mr. LARSH. It seemed to him that the section was already sufficiently definite. These institutions were to be regulated by law—open to all classes, but subject to legal restrictions. If it should be thought advisable to erect separate institutions for the black people, he had no objection, and supposed that would be the course pursued.

Mr. TAYLOR said the last line of the section was not very satisfactory to his mind. He saw no propriety in the words "so as to be open to all classes alike, subject only to reasonable restrictions." Was it possible that gentlemen were unwilling to trust this matter to the Legislature? It seemed to him that these words were unnecessary.

Mr. KING. If the gentleman would look at the terms of the first line of the section, he would find that colored people were included; that these institutions were for the benefit of the inhabitants of the State, and as such, of course the negroes must be included; they could not be excluded, therefore he had moved to exclude them.

The question was now taken upon Mr. King's amendment, and it was rejected—affirmative 25, negative 42.

Mr. MANON proposed to amend by striking out the word "inhabitants" from the first line, and inserting the word "citizen," which he subsequently withdrew.

Mr. HOLT. In order to reach more definitely the idea suggested by the gentleman from Preble, [Mr. LARSH,] he proposed to amend the section by striking out from the fourth line the word "reasonable," and inserting in lieu thereof the word "such," and adding at the end of the section the following words: "as shall be imposed by the General Assembly."

The CHAIRMAN said: The question must first be taken upon the amendment of the gentleman from Tuscarawas.

Mr. BENNET'S amendment was agreed to.

Mr. HOLT now offered his amendment, as above, and said: With the gentleman from Preble, [Mr. LARSH,] he would exercise the offices of humanity, towards all classes of people; and if the time should come when it should be proper that separate departments in these institutions, should be erected for the accommodation of the unfortunate of our colored population, he would not deny the Legislature the power to provide for them. There was a clear distinction between the exercise of those offices which we owe to humanity, universally, and the conforment of equal, political and social privileges, upon all classes. To the latter idea he felt totally opposed; but the offices of humanity, he was willing to excercise toward all.

Mr. LOUDON. Since the action of the Kentucky Convention, which had just finished their labors upon the subject of slavery, it might, perhaps, be the part of prudence, for us to take the necessary precautions, either to shield ourselves from the effects of thdir action, or to provide for the reception of some hundred thousand blacks, who are soon to be distributed over this north-western territory, by the operations of the new constitution in Kentucky—requiring all the emancipated blacks to leave that State in a given time. It might be well for us, now to have the forecast to make some provision for their reception upon our shores—for we shall be sure to have our full share of this population—being generally such slaves as may have been worn down by their masters, and emancipated in order to get them out of the way. We should, perhaps, make timely preparation for the reception of these unfortunates, especially if it be desirable to invite them to our care and protection.

Mr. HITCHCOCK, of Geauga. Gentlemen ought to look at the amendment and consider the very appropriate remarks of the gentleman from Montgomery, [Mr. HOLT.] As the section now stands, these institutions are to be opened to all classes alike, subject only to reasonable restrictions of law. If amended, it will read, "subject only to such restrictions as may be imposed by the General Assembly"—leaving the General Assembly to impose such restrictions as they may think proper, instead of restricting them to what may be considered reasonable. Now, what objection was there to the amendment? Did not gentleman suppose that the Legislature would be sure to make the restrictions which had been referred to? Or, were they afraid that so much power and discretion should be expressly delegated to the General Assembly? Certainly the committee had nothing to do with "white" or "black," or the Kentucky constitution.

Mr. VANCE, of Champaign [doubtfully heard.] The Legislature could certainly put in this provision without a constitutional provision. He would like to understand the necessity of putting all this in the Constitution. The great difficulty was, that we were putting too much into the Constitution. We shall have a book as large as a Scotch family bible, if we go on at this rate. He was willing to be restricted to some reasonable boundaries in this respect, and so it was with the committee of which he was a member.

Mr. HITCHCOCK, of Geauga. He could assure the gentleman from Champaign that he was perfectly satisfied with the report as it was originally presented. But since it had been amended, it seemed to him now that it was better to adopt the change proposed. He had not been so well satisfied with some of the changes which had been made; but let that pass. It would seem, from the manner in which the amendment of the gentleman from Montgomery had been received, that it had something to do with "niggers;" but, for his part he could not smell out anything of the sort, in the proposition. His olfactory nerves were not so sensitive as those of some gentlemen who seemed to find the smell of a nigger in every proposition.

Mr. ROBERTSON said he hoped the gentleman from Brown, (Mr. LOUDON) would consent to go for the amendment. He knew that the principle of the amendment was in accordance with the views of that gentleman, and for himself he would go for it very cheerfully.

Mr. HOLT'S amendment was now adopted.

Mr. KIRKWOOD desired to inquire of the Chairman of the committee, what was the object of this phrase in the third and fourth lines of the section—"so as to be open to all classes."

Mr. VANCE of Champaign. So as to be open to the rich and poor.

Mr. KIRKWOOD. He did not know that our laws recognized any such classification of citizens. But was it not intended to be an express provision to open the doors of these institutions to the blacks?

Mr. VANCE. No, sir; there was no such intention.

Mr. KIRKWOOD. Very well. He was just informed that there was an existing law, in which a distinction is made between the rich and poor, who may be admitted into these institutions.

Mr. LARSH explained, and said: the present form of the section had not offended his olfactories.

Mr. REEMELIN now moved the following as an additional section, which he considered might as well come in here as any other place.

"Each convict hereafter confined in the Penitentiary, shall be entitled to the benefit of the nett proceeds of his or her labor while so confined, and the General Assembly shall by law provide for the payment of the same in money, to each convict, or to his family, in such manner as may be deemed proper in the premises."

Mr. R. said: these nett proceeds of labor would be ascertained, of course, after deducting the expenses of keeping, and the cost of conviction. Every Legislature would of course construe this in such manner as they might think proper. He had observed that our convicts in the Penitentiary, after the expiration of their term, were turned out with perhaps five, or at most, ten dollars in their pockets; and, as a consequence, they were compelled to go back to their original home with all the disgrace of a convict upon them; and the result was, that they were generally returned again to the Penitentiary. His object was, not only to provide an incentive to labor, but to establish a rule of action for the State, founded upon the principle of justice. Would gentlemen think for a moment of the feeling which takes hold of the criminal in our Penitentiary—(he had been familiar with the experience of criminals)—to be required to labor day after day, and year after year, and have all the proceeds of his labors taken away from him! He says: "the State has no more right to take away the proceeds of my labor, than I have to steal the money or the horse of another man." He considered that such a provision of law as he had indicated, would have a very salutary effect upon the convict; and that the Penitentiary

would not be as great a draw-back upon the hopes and expectations of the poor fellow, if he were made to feel that he might be all the time making something for himself; and all the objections to convict labor, and its degrading effects upon the honest mechanics of the country, would be thereby removed.

He mentioned the case of a particular convict known to him, who was now confined in the penitentiary for four years; he believed him to be a man of good intentions; and if the proceeds of his labor were given to him, it might enable him to go back to the country of his birth, and commence his life anew, where the crime and his disgrace in this country might not be known. Whereas, if he were compelled to go abroad in this State, it would be impossible for him to rise again to the standing which he had before he was confined in the penitentiary.

Mr. WOODBURY said he hoped the amendment would prevail, for one reason which struck him with much force, and which had not yet been mentioned; there was many a man of small means confined in the penitentiary, whose family were left destitute, and if he were entitled to the proceeds of his labor, as the amendment proposed, many families might be saved from the sufferings of penury and want.

Mr. HAWKINS said his present impressions rather inclined him to favor the amendment. But while he contemplated this punishment of crime in the penitentiary, he could not but refer to that class of men in the community who are licensed by the authority of the State to furnish to those unfortunates in our prisons the exciting causes of crime, but who still go

"Unwhipt of justice."

He would prefer that this punishment should be divided between the guilty and those who furnish the excitements to criminality. If we could reach this class, and inflict upon them a portion of the punishment inflicted upon the criminal he should be glad to do so. It was an appropriate remark by some writer whose name he had forgotten, that society had erected a prison at the end of the road, without raising a sign-board to warn the traveller of his danger before he reaches the goal. The law licensed men to engage in a certain business in this community, to which may be attributed a very large portion of the crime committed in the state of Ohio.

Mr. SAWYER. (in his seat.) Did the gentleman want to get at the root of the evil?

Mr. HAWKINS. He was only alluding to the justice of legal penalties against rum-sellings. He hoped the gentleman from Auglaize did not take his remarks as personal.

Mr. SAWYER, (rising amidst considerable merriment.) Certainly not. He understood the gentlemen to refer to the sale of grog, or the making of it, as the root, or the commencement of the evil—(and he believed it was a very great evil)—of intemperance. He did not want to see the gentleman begin only half way back; he wanted to see him go about to convert the devil himself.

Mr. HAWKINS. If it was proposed to punish the old fellow according to law, he hoped the gentleman would introduce his own amendment. He was in earnest about what he said when he declared himself in favor of this amendment. He would not, if he could avoid it, allow the innocent to suffer any portion of the penalty of the guilty. He would devise some means, if he could, for the benefit of the convict's wife and children, to save them from the penalty consequent upon his crime. He would desire, also, to look a little into the causes of crime, or, at least, to place a guide-board by the way, which might warn the traveler as he approached the danger. He would pay some attention to that class of the community who stand as the direct prompters to the commission of crime. But this amendment would lighten the punishment of the criminal, according to the amount of the wages which he might receive.—For whose benefit should this wages of the convict be applied? Was it not due to his unfortunate family? Or should the innocent undergo a share of the punishment for the crime of the guilty? He hoped before the business of this Convention close, to find even his friend from Auglaize willing to put into the constitution a provision which shall authorize the Legislature to relieve the community, now suffering from the effects of the licensed sale of ardent spirits, by inflicting a penalty upon the business.

Mr. SAWYER (in his seat.) He has no objection.

Mr. HAWKINS. He was glad to hear it. He believe it was the duty of every just government, to provide some means of redress against the evils resulting from the sale of ardent spirits: and at the proper time, if no other gentleman would, he intended himself to introduce a proposition which should go back to this cause of crime—which should show the connection and relation subsisting between crime and the cause of crime, and demonstrate to this Convention the justice of a constitutional provision, which should extinguish, thus far, the means by which such terrible devastations have been committed in the State of Ohio.

Mr. LARSH desired to propose an amendment to the amendment, by adding these words, "provided the cost of conviction shall be first deducted from the proceeds of the labor of such convicts."

Mr. MITCHELL suggested that to complete the thing, it would be necessary to include the costs for transportation.

Mr. LARSH accepted the modification.

Mr. ROBERTSON. I am in favor of the amendment of the gentleman from Hamilton, [Mr. REMMELIN,] but I am afraid that it will not receive a fair consideration at this time. The temper and character of this Convention is such, that no new proposition, however salutary or reasonable, can receive either its attention or support. But I shall not, on that account, shrink from the support of the proposed amendment, which embodies the christian declaration, that criminals are not cast beyond the pale of humanity; but, that as they are human beings, we owe them sympathy, notwithstanding their crimes.

I like the proposed amendment, because it recognizes the principle that confinement in the penitentiary is designed for the reformation of the convict, as well as for the protection of society; and it forbids the abhorrent assumption that such imprisonment is designed to satisfy the vengeance of the law. The spirit of the age repudiates the presumption that the design of penal laws is to inflict revenge upon the poor wretches incarcerated within the walls of the Penitentiary. Penal laws should never be vengeful, but reformatory, as well as vindicatory of the rights of the community.

The treatment of criminals with humanity, is one of the sublimest triumphs of christianity. It is not long since this wretched class of beings were treated with the most unyielding severity. But that distinguished and indefatigable philanthropist, Howard, devoted his valuable life-time to the amelioration of their condition, and by his exertions accomplished great reforms in the discipline of prisons throughout Europe. This benevolent reformer won fame and immortality by devoting all his energies and fortune, traveling over Europe, visiting filthy prison houses to improve the condition of convicts and outcasts. Many benevolent citizens have labored in the same field of humanity in this country, especially in New England, and their labors receive general approbation. In the South and West, Miss Dix, who lately visited our State, has done much to-

wards creating a correct public opinion on this subject.

I believe Mr. Chairman, that great reforms are demanded in the discipline of prisons, and the treatment of convicts—reforms which will, at the same time, protect the community and tend to the reformation of criminals. My late official duties enabled me to become intimately acquainted with the character and moral defects of this unfortunate class. I could not help feeling for them a deep sympathy, or avoid treating them with kindness, wretches and outcasts as they are. They violate the law and ought to be held accountable. Yet is it not true that they are often more sinned against by society than sinning? They are generally either badly educated or not educated at all; and cast upon the community without morals, without good habits, without instruction, without friends, are not qualified to become useful or industrious citizens. Thus they are easily tempted, and by circumstances often driven to the commission of crimes for which they atone within the walls of a penitentiary; and perhaps, after serving a term of years, they are again cast upon the community unreformed, to resume their career of iniquity. Would it not be better for society if these unfortunate beings were made to comprehend, upon their first entrance in the penitentiary, the causes which brought them there, the necessity of reform, and that even in the prison-house they could enjoy the means of reformation—that even there they could, by industry accumulate a sufficiency to commence, on their release, a better course of life. Prison discipline like this would reform all that could be reformed, and no doubt convert many, who would otherwise be lost men, into useful members of society. At present there are very few instances of reformation among those who have served a term in the Penitentiary. Our prison system has a contrary tendency, and it is this defect which calls for immediate reform. Young men committed to the Penitentiary become, under the present system of discipline hopeless and desperate.—

I recollect very well the case of a young man of twenty years of age, whom I arrested for mail robbery, while marshal. After he was convicted, I endeavored to impress upon his mind, a resolution to reform, and said to him, that after his term of imprisonment, (he was committed for seven years,) he would still be a young man, and might commence life anew, resolved to be honest, and thereby re-establish himself in society. But the young convict replied that this was impossible—that there was no chance for his reformation—that he would leave the prison without money—without character—and without friends; and wherever he might go, shame and dishonor would follow him; that he would be hunted down; and, being without hope, friendless and desperate, he would be compelled in self-defence, to continue during the remainder of his life, in a career of crime and wretchedness. It is our duty to take such young men by the hand, and lead them on, even within the walls of the penitentiary, in the path of hope and reformation. With old criminals, there is but little prospect of improvement; but even that class should be treated with humanity.

Mr. MANON. He should vote for the proposition of the gentleman from Hamilton, and against the amendment of the gentleman from Preble.

Mr. RANNEY. He wished to say that his colleague, [Mr. PERKINS,] who was now absent, had introduced a proposition embracing the principle of this amendment; and he regretted that his colleague was not present, inasmuch as it was known that he took a deep interest in this question; and in behalf of his colleague, he expressed his views.

While he was up, he desired to say, that he also, most heartily concurred in the amendment. If you want to compel the people to be just, and if you mean that the men of the State shall regard the right of property in others, you must begin by setting that noble example on the part the State itself, by giving to those men in your prisons the just proceeds of their labor.

The gentleman from Fairfield [Mr. ROBERTSON] had expressed his fears that the amendment would not prevail; but he did not see why it should not. He supposed that the gentleman calculated on the opposition of the prejudices which still held the public mind upon this subject. Punishment was formerly predicated on the idea of revenge—an idea which still clings to us—although we pretend not to go upon that principle, still in point of fact we do. And now it was nothing but the sheerest justice that we should adopt this principle of the amendment into the constitution. The convict should pay the cost of his keeping, and all the expenses attendant upon his conviction, and when he had paid that what right had the State to go and take from him the proceeds of his labor? What would the State give him in return for his labor? Nothing!

He placed this arrangement upon the principle of justice: but how much stronger would it be, if placed upon liberal and charitable principles? Those who had any experience in the courts—especially the lawyers in the committee—knew that we did not look upon every offender against the law, as a "sinner above all others:" for example, a man, by in advertance, might pass a counterfeit note; and so thrown into prison upon a mere technicality; and so also, a man might be put into prison on account of his evil associations with beings regarding neither truth nor character; yet, such an individual might retain within him, a disposition as generous, and a heart as noble, as beats in the bosom of any man on earth. Still however, to such an individual, the same disgrace attaches as you mete out to the most abandoned of the race of men. But whenever the great end of punishment was considered—the reformation of the offender—how did it become a great State to look to that, instead of striking out all hope of reformation.

Mr. ARCHBOLD, interrupting. Did the gentleman pronounce reformation in a criminal to be the great end of punishment in human tribunals?

Mr. RANNEY. He did.

Mr. ARCHBOLD. He would ask the gentleman again, was not the prevention of crime another great end of punishment.

Mr. RANNEY. He had not said that reformation was the only end of punishment. He had said that it was one of the great ends of punishment. He had referred to the spirit of the law as it stood more than three hunred years ago. The prevention of crime was certainly another great object of punishment; and so, also, was the protection of the community from further depredations. What he objected to in this matter, was, that the law extinguished hope in the convict, and consigned him to irretrievable ignominy—for while hope of reformation remained, did it become the authority of a great State to blot out that hope? Therefore, he had always thought that there should be a discrimination made in punishment. He was perfectly safe in affirming that the result of our penitentiary system was to turn out upon society a more irreclaimable set of men than it takes in. Now it was said that "charity covereth a multitude of sins," but here, in this Convention, it hardly covered a man born outside of the State, for it was but this morning that an amendment was offered, to the effect that a man from beyond the great waters, should not be entitled to the benefits of our benevolent institutions. As though a man "had no business to be born anywhere else but in Connecticut." He considered that our charity ought to be broad enough to cover all climates and all classes of men

But to return, it frequently happened that the head of a family was consigned to the Penitentiary. Perhaps in a fit of intoxication, from yielding suddenly to the impulses of a noble heart, such a man might be led to the commission of a crime; which he would not have done, had it not been that he was under such influences. But now you take the man from his family—he might have been a bad father, or a bad husband, but still he was a husband and a father, and there were those who looked up to him for daily bread—you consign him to the Penitentary for such a technical offence, and you take from him all the proceeds of his labor, while his wife and children are beggared, and pining and starving from want. He asked again, did this become a great State? You might erect buildings by his labor—you may rear your State house, and make it the admiration of every beholder, far outstripping everything around it in the magnificence of its architecture; but, still, no man will ever look upon it without reflecting and saying, that this building was erected out of the proceeds of the labor of men withheld from their wives and families. No, sir, (he continued,) that stupendous capitol will be a standing monument of infamy, until this wrong shall be corrected. I do not know that this proposition will receive a single vote, except the votes of those who have declared themselves in favor of it; but no matter, if no vote but mine were cast for it, I would record it, and trust to posterity to decide whether I am right or wrong. I know that it may be said of the supporters of this proposition, that they are the friends of rascals; but I remember—and I may be permitted to say—that it was spoken as a reproach against the greatest of all philanthropists, that he was "a friend of publicans and sinners." What man would refuse to vote such a tribute of justice, that it should go into the constitution itself, that however poor, degraded, and down-trodden the citizen may be, there shall remain this one great rule of justice, that, to the laborer belongs the proceeds of his labor: and this great State shall secure it to him.

Mr. MITCHELL rose here to a point of order, which he subsequently waived.

Mr. RANNEY proceeded. He knew a man of good character who stood as high as any man in the community, who was compelled to serve two years in the penitentiary, and was just as innocent of the crime for which he was confined as any man in the county. He was convicted for having in his possession, as was supposed, the tools and implements for making counterfeit money: it turned out that these tools, which prejudice and faction had supposed were for counterfeiting, were nothing but tools for constructing a lock, for the invention of which he was endeavoring to get a patent right. At the end of the two years the Governor turned him out, and possibly the laws of the penitentiary allowed him two dollars in his pocket for his expenses home, inducing perhaps the moral necessity of stealing, the very first night after he had got rid of the grappling irons of the law.

Mr. MANON said: The gentleman from Trumbull was mistaken in the allusion made to his remarks. It was a general rule that a Dutchman might be allowed to speak twice, and that an Irishman might be allowed to speak till he could be understood. He [Mr. M.] did not mean to be understood to say that because a man was born in a particular place, he should therefore, be excluded from the enjoyment of any of the privileges of a freeman.

Mr. HITCHCOCK of Geauga said: He did not know that a single individual would agree with him upon this subject; for, as far as we had heard every gentleman seemed to be perfectly satisfied with this proposition. But he was not satisfied with it. He was not convinced, even by the eloquence of his friend from Trumbull [Mr. RANNEY,] that the perpetrators of crime are the most noble souled class of men in community. It seemed to his mind, that this was an important subject; and one about which we ought to hesitate a little at least, before we adopt this amendment; for it was a proposition to turn your penitentiary into one of your benevolent institutions, where the inmates are to be employed and paid for their labor at the public expense. The community, (he continued,) are to be taxed for the purpose of paying these inmates of the penitentiary for their labor while there. It may be right and proper, that those persons who are confined in the penitentiary, should receive a reward for their labor in this way; but it seems to me, it would be better to leave them alone, and let them go abroad and perform labor for whoever may choose to employ them.

And again: if we turn over those penitentiary convicts to our benevolent institutions, we ought, by all means, to see to it, that a certain portion of the race shall receive more of the offices of humanity there.—The "white" should certainly be put in.

But now there are two modes of punishment by the penitentiary: by confinement, and by employment: by solitary confinement, and by confinment and labor: and there has been some controversy as to which is the best mode. In Pennsylvania they have adopted the method of solitary confinement—which I believe is best, only it is the most expensive. It is found to be bad economy. In this State we have confinement and labor—believing that is more beneficial for the prisoner.—a punishment less severe than solitary confinement. It will be observed, however, that it is made the duty of the courts before whom an individual is convicted, to determine whether he shall suffer solitary confinement or not. And now suppose we adopt this amendment, and make it a constitutional point; and then the courts should propose solitary confinement, (which I think ought to be done in many cases,) what would go with the labor of such convicts? If you carry out the principle, you must have no solitary confinement; but every person confined in the penitentiary must be put to labor, and his labor must be paid for by the State. But this does not seem right to me.

I had thought that when a person is committed to prison, it should be for punishment; and that it was not in the nature of a bounty for crime, bid up to the individual, in order that he might be induced to labor for us for compensation. The amendment did propose in fact, to bid up a reward for crime; for if the individual be committed to the penitentiary, the penalty is, that he shall receive compensation from the State for labor performed. If gentlemen are prepared for this, it might be better, I think, just for the State to employ and pay regularly, five or six hundred laborers, and let the vagabonds take care of themselves.

Mr. ROBERTSON (interrupting) said: The amendment did not propose the thing upon which the whole argument of the gentleman from Geauga was based. It proposed, that, when all the expenses shall have been paid, the nett profits shall go to the credit of the convict—the charges for boarding and every thing else.

Mr. HITCHCOCK resuming. That may be the effect of the amendment; and I do not know but it is right and proper, that whenever a man is confined in the Penitentiary, an account should be opened with him by some officer of the State—and that he should be charged with boarding, and every rag of clothes he wears; and if they allow him any spending money, to charge him with that, and when his time was up, to strike a balance, and whatever may be due to him, on account of labor, allow and pay it.

Why, Mr. Chairman, we do not want the labor of these men. It is for the benefit of the prisoners themselves that this is imposed upon them. I do think it would be imposing a very great burden on the State, to compel us to employ men of this class, in order to carry out the principle, that the laborer shall have his hire.

I may be alone in this, for no other person has yet raised his voice against it. And my judgment, in the case, may be owing to my preconceived opinions, for I had supposed that the law of punishment was penalty for the offence. This has been my opinion—but, if in punishing, you can effect a reformation, it is certainly desirable to do so. I know that there are those, who, having been confined in the Penitentiary, have afterwards become industrious and reputable.

But one thing is certain; if this amendment is to be adopted, our criminal laws will all have to be revised as soon as possible: and the less the number of convicts we have, the better it will be for the State. Indeed, I think you had better not confine your criminals at all, but let them go at large.

Mr. CASE of Licking, said he could not say he was in favor of the amendment of the gentleman from Hamilton. It seems to be based upon the presumption that the State is making a profit, a speculation out of the services of the convicts, and that in the place of putting these amounts into the treasury, they are to be paid over to the convict. He had yet to learn that there is a profit accruing to the State. Taking into consideration the cost of the penitentiary, the expenses incident to the prosecution, transportation, keeping guarding, feeding and clothing the convict, he believed that if an account were stated between the State of Ohio and the convict, the State would be found the losar by the transaction. On the contrary, there is no evidence that there is, or ever was, either profit or prospect of profit, and even if there should be, he was opposed to the amendment. Punishment of criminals consists in the necessary confinement, loss of time and the process of labor to the criminal, and the inevitable disgrace. These all attach to single men. To the married, there is the additional feature of loss of time to the family of the convict. By the amendment, it is asked to take these away. He could not subscribe to it. He was in favor, instead of mitigating the penalties of punishment, of increasing them. The strongest motive to deter the head of a family from the commission of crime would be the injury detailed upon that family by his confinement and punishment, involving, as it does, the loss of his ability to provide for them.

The cases put by the gentleman from Trumbull are extreme cases. They were undoubtedly meritorious ones, and deserved such reparition as the General Assembly could make. But they furnish no reason for a constitutional provision, such as is proposed. He hoped that a proposition so novel, so quixotic, so transcendental, would find no place in the constitution we were about to construct; but that if any such thing became necessary, it would be left to the wisdom of the Legislature.

Mr. MITCHELL desired to say a few words in reply to the gentleman from Trumbull, [Mr. Ranney,] in addition to what had already been offered. The proposition is, in fact, that the reformation of men addicted to crime is not to be consummated by punishment, and by the employment of those moral means that are calculated to reach their consciences, but by keeping them a limited period in the employ of the State, and handing out to them, when they are discharged, a purse of money, to furnish means with which to gratify their lusts and untamed passions. Reform is not to be accomplished by means such as these. It is to be effected, if at all, by working a change in the individual, through the assistance of moral and industrial means—by bringing him under the influence of moral motives, and enforcing and forming habits of industry. It is thus the moral man is built up and qualified to take a place as a member of society. Such considerations seem to be enough to justify me in opposing this amendment.

When this amendment was first proposed, he had thought of offering an amendment, which should, in case of convicts with families, make some provision in this manner for their relief, in case they were destitute; but the argument of the gentleman from Licking [Mr. Case] had satisfied him that it was not admissible; and as for the amendment as it is, he would not consent to hand over to a newly-discharged convict a large amount of money, which, in a large majority of cases, would be employed solely for the gratification of his passions, and thus act as an incentive to crime. He had been struck with the incident related by the gentleman from Trumbull, [Mr. Ranney,] and would suggest to the gentleman to devise a provision, to be inserted in the constitution, which should forever hereafter prevent innocent men from being convicted. This suggestion comes to me from a venerable gentleman sitting at my right here—the gentleman from Belmont, [Mr. Kenon.] If such a thing could be done, he would go for it.—But, in the mean time, we shall be forced to sit down with the conviction that there ever will be some errors in human affairs, and that to remedy all would be even beyond the reach of this assembly.

The gentleman advocating this proposition have spoken of another cause of the commission of crime—the vice of intemperance—and have taken occasion to speak strongly against those engaged in the sale of intoxicating drinks, as if they were solely answerable for the crimes committed by intemperate men, or by persons in a state of intoxication. Intemperance is undoubtedly the cause of much evil and suffering; but is it not as much the evidence as the cause of depravity? Is not the habitual indulgence in ardent spirits a proof of vicious and uncontrolled desires existing previous to such indulgence? He thought the orators and apostles of the temperance reformation had committed a wrong, calculated to do great injury to their cause, by making the dealer in spirituous liquors alone the sinner, while the drunkard is held up as the poor and innocent victim of his crimes. If he commit first the crime of getting intoxicated, and then under the influence of the first, commits a second crime of another character, the first offence is by these men claimed to wipe out the second, and the felon who has sinned twice against society is holden up as an object of pity, an innocent victim to the wrong doings of others. This, in my judgment is an egregious and dangerous error. Drunkenness is itself an offence against the good order of society, and should ever be so considered.

This course of these misguided men is having a tremendous effect in the increase of crime, by wiping out the impression made by its abhorrent features, and lessening its disgracefulness in the eyes of the public.

It has become the custom with some modern philanthrophists to take sides with the criminal. No sooner has a man violated the law, and become obnoxious to its punishments, than he becomes an object of their warmest sympathy. This feeling defends him in his trial for the crime, and follows him through his punishment, striving at every turn to release him from that suffering which is but a just reward for his misdeeds. These men are guided by a mistaken sentiment not calculated to promote morality and uprightness, but immorality and crime. I beg members to think seriously of this matter and its ultimate tendencies.—They commit a wrong by imitating a virtue. There have been men, who, impelled by a noble desire to do good have visited prisons, and urged reforms in their

discipline, for the purpose of divesting punishment of its brutality; and they have succeeded. Their imitators are endeavoring to take from crime its punishment. He hoped they would not be allowed to prevail.

Mr. LIDEY was astonished at the course which the debate had taken, and especially astonished at the opinions of the gentleman from Hamilton, [Mr. REEMELIN.] He did not rise to make a speech, but, at a proper time, intended to offer an amendment to the pending one, providing for the donation to each convict, on taking up his residence in the Penitentiary, of a tract of forty acres of land, for which, on the day of his discharge, in consideration of his service, he should receive a deed in fee simple (Laughter.)

Mr. LARWILL spoke of the case cited by the gentleman from Trumbull, and thought it deserved consideration, and that there should be a constitutional provision for such.

Mr. ARCHBOLD. I cannot and I will not consent to debate this question. The proposition of the gentleman from Hamilton [Mr. REEMELIN] is a touch above—far above, the sublime. The gentleman has got quite into the regions of transcendentalism, far beyond the atmosphere of common sense. But I must defend the sages of the legal profession from the slanders of the gentleman from Trumbull [Mr. RANNEY]: that gentleman will not be offended, he well knows that I highly appreciate his talents and his attainments, but in his zeal for transcendentalism he has been guilty of what I think a great inadvertence. If any sages of the law ever asserted the principle that the reformation of the criminal is the chief and principal end and aim of human punishment they must have been the Kickapoo and Shawnee sages who once lived up there near the borders of Trumbull county. [Laughter.] The sages of the law with whom I have been conversant lay down an entirely different doctrine. They say that the prevention of crime is the main end and design of punishment inflicted by the sentence of human tribunals—that if there was no danger of further annoyance to society by the commission of crime, human tribunals would have no shadow of right to inflict punishment, for past transgressions. In other words that the welfare of the people, the safety of society are the ends and the only ends to be aimed at. If the reformation of the criminal can be effected it is very desirable as an auxiliary to the main design of penal laws. The protection of society being the object, if that can be attained by the reformation of the criminal it is a consummation devoutly to be wished, but it can never be made the principal object to be attained. The reformation of the criminal was, and is, the principal and professed object of the inquisition and other arbitrary tribunals. They profess to act for the good of the criminal's soul and the reformation of his manners; they are horrid tyrannies and so will every other tribunal be which professes to act upon similar principles. Society cannot safely act upon any such theories—it must act upon the plain, intelligible, common sense principle of the prevention of crime.

Mr. REEMELIN said the gentleman from Monroe [Mr. ARCHBOLD] had characterized the speeches that had been delivered in favor of the proposition as a touch above the sublime. If such is the case, he thought the speeches of the gentleman from Monroe, and of the gentleman from Geauga [Mr. HITCHCOCK] as well calculated to prove the truth of the saying that there is but one step from the sublime to the ridiculous. He inquired if it was not beneath the sound, practical sense of the gentleman from Geauga to tell us that the people are taxed to pay the expenses of the convicts in the Penitentiary. The effect of this proposition is to pay only what remains after all the expenses of capture, trial, confinement and support are fully paid and satisfied. The gentleman from Geauga seems to think it will be difficult to open and keep an account with each convict. Does he not know that that is done already, and that a statement of the cost and the earnings of each always stands upon the books of the institution. We all know that the estimate of this matter shows that the cost of the sustenance of the convicts amounts to about one-third, on an average, of their nett earnings.

If we are to believe the gentleman from Licking, there is a wrong state of feeling in Ohio, upon these questions. Now there are many cases in which men in the Penitentiary are really better than those who are out. We know that the means of ascertaining criminality and the laws for its punishment are inadequate to fulfil the end for which they are designed. They often strike the innocent, and let the guilty escape. Is it wrong under the constant operation of such risks, to give men the proceeds of their labor? What reason have we to suppose that our system is so perfect as to do no injustice in any case, and leave nothing to be improved? The world is divided in opinion between two systems of prison discipline—that of solitary confinement, and that of social labor. We have adopted about half of each. We force the convict to labor and deprive him of the benefit of the proceeds. Will not the poor man feel better under the operations of a just government, and will not public justice aid in his reformation? If you deprive him of the proceeds of his labor, do you not place an obstacle in the way of his reformation? There was a man who had been seven years laboring in the penitentiary for the benefit of the State. When he came out, he said that if he had the money which he had earned, during his time of service, he could start in life; but he was deprived of it, and the result is, he is a town pauper and a public charge. He was determined to take in one way from the public what the public had taken from him in another. A young man whom I saw yesterday, who is in for life, complained of the hardness of this rule, and said it gave him the bitterest feeling connected with his imprisonment. He ought, he said, to be earning money to pay his debts, but all the proceeds of his labor was seized by the State. It was this, undoubtedly, which had induced him to attempt to starve, and on one occasion to hang himself, and that made him, when attacked with the cholera, refuse to take any medicine, and determined to die of the disease.

And now, said Mr. R., I ask seriously, will not a man sentenced to labor, do better when he is told that over and above his support, the proceeds of his labor are his own? Will there not be less necessity for a resort to the shower bath and discipline, and a greater chance for reformation?

And now, it will not answer the purpose for gentlemen to attempt to sneer this matter down. Men are liable to be prejudiced against novelties, but if gentlemen will follow this question to its result they will come to the same conclusion to which I have. Justice to all, is one of the first principles of government and it is due to the criminal as well as to the innocent. This practice has been adopted in other countries with a salutary effect, and I am told that it is the case in Pennsylvania, and I hope the time will come, when, with the full consent of the people, we will try the experiment in Ohio.

Mr. HOLT. The amendment and remarks of the gentleman from Hamilton [Mr. REEMELIN] involve all the questions that have been agitated with regard to prison reform—the object, kind and degree of punishment, all are brought up. With this vast field of discussion before us, a man can make a speech of two or three hours. Were I sitting in the General Assembly,

in the place of this Convention, I should concur with the gentleman from Hamilton [Mr. Reemelin] in the propriety, and perhaps the policy, of his amendment. The defects of the prison system may be a part of the causes of crime in the State, but I would ask my friends who are inclined to favor this proposition, how would the people regard the insertion of a clause like this, in the organic law of the State? Will not the Legislature adopt such a provision as soon as the people are convinced of its necessity and practical utility? If I should offer to incorporate the golden rule which we find in the Book of Books, "Whatsoever ye would that men should do unto you, do ye even so unto them," no one could rise and object to the perfect wisdom of such a rule of action, but every one would oppose its incorporation as a provision in the constitution. But I wish to be understood as a fast friend of all real progress, and I have no sympathy with the spirit which would sneer at a proposition like that of the gentleman from Hamilton. Benevolence is the soul of the progress of the age, and without the feature of benevolence, I would prefer standing still, to that equivocal progress in which a desire for the amelioration of the condition of man had no part. All these noble efforts for human improvement must be regarded as they deserve. In the proper time and place, I trust I should be found advocating them. But I shall be compelled to vote against the proposition [Mr. Reemelin's] here. I hope that it may be left to the action of the Legislature.

Mr. MANON said he should vote for the proposition of the gentleman from Hamilton [Mr. Reemelin.] He could see no difference between legalized robbery and that which is not legalized. He was clearly of the opinion that the State had no right to the money earned by the convict; it belonged to the man who earned it by the sweat of his brow—to the unfortunate convict. Treat him with as much kindness as possible—keep an exact account of his earnings, and when his term of service has expired, give him what belongs to him, and say "go, and sin no more."

Mr. BENNETT moved that the committee rise and report, which motion was disagreed to.

Mr. HENDERSON. If this proposition should succeed I shall offer a substitute.

Mr. ROBERTSON read the following, which he would offer as an amendment:

Provided, That the benefits of the above provisions shall not be enjoyed by any convict who has been sentenced more than once to the penitentiary.

Mr. ROBERTSON remarked, that he was in favor of giving to young convicts every inducement to reform, consistent with their safe keeping, and without expense to the State. Incurable, constitutional, criminals, he would confine in the penitentiary for life, as moral lunatics.

Mr. MITCHELL. Who shall be the judge of a criminal's incurability?

Mr. ROBERTSON. I would reform our prison discipline, and then declare all criminals sent a third time to the penitentiary, as incurable, and confine them for life.

Mr. Robertson's amendment was disagreed to.

The question recurring upon the amendment offered by Mr. Reemelin, the same was disagreed to.

Mr. SMITH of Warren offered the following, which was agreed to: Add at the close of section 2 the words "And the question upon all nominations made by the Governor shall be taken by yeas and nays and entered upon the journal of the Senate."

Mr. LEADBETTER offered the following as an additional section which was unanimously agreed to:

"Sec. 2. The Governor shall have power to fill all vacancies that may occur in the offices created by this article of the Constitution, until their successor in office shall be elected and qualified, or until the meeting of the ensuing Legislature, and the successor confirmed and qualified.

On motion, the committee rose and reported the Report [No. 1 of the standing committee on the Public Institutions] back to the Convention.

On motion, the report as amended was laid on the table and ordered to be printed with the amendments in italics, and the words stricken out by the committee in brackets.

Mr. LIDEY moved that the Convention adjourn.

Mr. CHAMBERS demanded the yeas and nays, and the same being ordered, resulted yeas 39, nays 35, as follows:

Yeas—Messrs. Andrews, Archbold, Barbee, Bates, Bennett, Brown of Carroll, Cahill, Case of Hocking, Case of Licking, Collings, Dorsey, Florence, Greene of Defiance, Hamilton, Hard, Holmes, Hootman, Jones, Kirkwood, Larwill, Leech, Lidey, Loudon, Manon, Mitchell, Norris, Orton, Quigley, Ramsey, Robertson, Scott of Auglaize, Smith of Warren, Stickney, Stidger, Taylor, Thompson of Shelby, Townshend, Warren and Williams—39.

Nays—Messrs. Barnett of Montgomery, Bliekensderfer, Brown of Athens, Chambers, Clarke, Cook, Curry, Cutler, Firestone, Gillet, Graham, Gregg, Grosbeck, Harlan, Hawkins, Henderson, Hitchcock of Cuyahoga, Hitchcock of Geauga, Horton, Hunter, Johnson, Lamb, Morehead, Morris, McCleod, Patterson, Peck, Reemelin, Sawyer, Sellers, Stanton, Stillwell, Struble, Vance of Butler and Woodbury—35.

So the Convention adjourned.

FORTY-FIRST DAY, Monday, June 24, 1850.

8 o'clock, A. M.

Mr. MITCHELL presented a petition from Lafayette Emmet and 54 other citizens of Knox county, praying that a clause be engrafted in the new constitution forever prohibiting the law-making power from creating, authorizing or continuing corporations of any description.

Upon his motion, it was referred to the committee on Banking and Currency.

Mr. SWAN presented a memorial from T. Rainey, on the subject of education and normal schools, as follows:

To the Honorable,
The Constitutional Convention of Ohio:

Your memorialist, who speaks in behalf of the Teachers of Ohio, and a large number of the friends of Common School education, respectfully presents, That the highest interest of a free people is the education of every citizen in the general principles of sound knowledge; and that to secure this end it is the privilege of the government to afford all useful and judicious facilities tending to the same. And as experience has demonstrated that the general education of the masses depends on governmental assistance, your memorialist respectfully and urgently recommends a provision in the organic law of the State for

1. A larger School Fund;
2. A State Board of Public Instruction; and
3. One or more Normal Institutes for the preparation of Teachers for the practical duties of the school room.

Believing your honorable body disposed to increase the School Fund to the greatest extent in your power, your memorialist will give a brief sketch of

1. *The uses, objects and benefits of a State Board of Public Instruction*, to be detailed by the "bill" creating the same in the Legislature.

This Board should consist of five or more members, one of whom should be Secretary of the Board, Superintendent of Public Instruction and Principal of the Normal School; and who should make a report of the condition of Schools to the Legislature at each of its sessions. He should exercise a general supervision of education throughout the State; direct and assist the district superintendents, and perform all other duties incumbent on such officers generally.

It should be the duty of the other members of the Board to exercise a similar supervision of education in the respective districts assigned to them; collect and forward to the General Superintendent all statistics connected with schools; visit each school district in his district once every year; examine schools, and assist in the examination of teachers and the issue of teachers' certificates; hold Teachers' Institutes at least once a year in every county in his district, for the temporary instruction of teachers in the best methods of teaching and governing schools; to promote the general interests of Common School literature, by arousing the popula-

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Education, Public Institutions, and Local Government Committee

Planning Worksheet
(Through July 2016 Meetings)

Article VI - Education

Sec. 1 – Funds for religious and educational purposes (1851, am. 1968)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved
Completed	**5.14.15**	**10.8.15**	**10.8.15**	**10.8.15**	**11.12.15**	**12.10.15**	**12.10.15**

Sec. 2 – School funds (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved
Completed	**5.14.15**	**10.8.15**	**10.8.15**	**10.08.15**	**11.12.15**	**12.10.15**	**12.10.15**

Sec. 3 – Public school system, boards of education (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved
Completed	**10.8.15**						

Sec. 4 – State board of education (1912, am. 1953)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 5 – Loans for higher education (1965)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 6 – Tuition credits program (1994)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Article VII - Public Institutions

Sec. 1 – Insane, blind, and deaf and dumb (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 2 – Directors of penitentiary, trustees of benevolent and other state institutions; how appointed (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 3 – Vacancies, in directorships of state institutions (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Article X - County and Township Organization

Sec. 1 – Organization and government of counties; county home rule; submission (1933)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 2 – Township officers; election; power (1933)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 3 – County charters; approval by voters (1933, am. 1957)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 4 – County charter commission; election, etc. (1933, am. 1978)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Article XV - Miscellaneous

Sec. 1 – Seat of government (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 3 – Receipts and expenditures; publication of state financial statements (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 4 – Officers to be qualified electors (1851, am. 1913, 1953)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 6 – Lotteries, charitable bingo, casino gaming (1851, am. 1973, 1975, 1987, 2009, 2010)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 7 – Oath of officers (1851)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 10 – Civil service (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 11 – Marriage (2004)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Article XVIII - Municipal Corporations

Sec. 1 – Classification of cities and villages (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 2 – General laws for incorporation and government of municipalities; additional laws; referendum (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 3 – Municipal powers of local self-government (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 4 – Acquisition of public utility; contract for service; condemnation (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 5 – Referendum on acquiring or operating municipal utility (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 6 – Sale of surplus product of municipal utility (1912, am. 1959)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 7 – Home rule; municipal charter (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 8 – Submission and adoption of proposed charter; referendum (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 9 – Amendments to charter; referendum (1912, am. 1970)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 10 – Appropriation in excess of public use (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 11 – Assessments for cost of appropriating property (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 12 – Bonds for public utilities (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 13 – Taxation, debts, reports, and accounts (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

Sec. 14 Municipal elections (1912)							
Draft Status	Committee 1st Pres.	Committee 2nd Pres.	Committee Approval	CC Approval	OCMC 1st Pres.	OCMC 2nd Pres.	OCMC Approved

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2016 Meeting Dates

October 13

November 10

December 8