



Mark Flanders  
Director

# Ohio Legislative Service Commission

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## Memorandum

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R-130-3316

**To:** Bethany Sanders, Deputy Legal Counsel  
Senate Minority Caucus

**From:** Emily E. Wendel, Staff Attorney

**Date:** March 18, 2014

**Subject:** Obsolete provisions of the Ohio Constitution

You asked which provisions of the Ohio Constitution have been ruled unconstitutional, have expired, or otherwise might be considered obsolete. I surveyed our research staff concerning any potentially expired or obsolete provisions, and we identified several sections of the Constitution that might no longer be used or that have expired by their own terms.

I also asked our staff whether they knew of any provisions of the Constitution that are not enforceable because the U.S. Supreme Court or a federal court with jurisdiction over Ohio has ruled such provisions unconstitutional. The staff were aware of only one such section; Ohio's congressional term limits are not enforced because the U.S. Supreme Court overturned a similar Arkansas law.<sup>1</sup> The provisions identified in the survey are described in the table below.

The table does not include any sections of the Constitution that may be similar to provisions that have been ruled unconstitutional in other states by courts that do not have jurisdiction over Ohio. Unfortunately, it would not be possible for our office to identify every case of that type, and at most, such a case would be considered persuasive authority over Ohio's federal courts or the U.S. Supreme Court. Further, in comparing such a case to the Ohio Constitution, we would be unable to speculate about whether an invalidated provision from another state might be sufficiently similar to part of the Ohio Constitution to persuade a court that Ohio's provisions also are unconstitutional.

I hope this information will be helpful. If you have any questions about these matters, please contact me at (614) 387-1124 or ewendel@lsc.state.oh.us.

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<sup>1</sup> Ohio Const. Art. V, Sec. 8 and *U.S. Term Limits v. Thornton*, 514 U.S. 779 (1995).

Citation	Description	Reason for Inclusion	Explanation
Art. IV, Sec. 19	Authorizes the General Assembly to establish courts of conciliation.	Potentially obsolete	This section was part of the Constitution as it was adopted in 1851 and was meant to help ease judicial backlogs by providing a means of alternative dispute resolution. The General Assembly has never established courts of conciliation. <sup>2</sup>
Art. IV, Sec. 22	Established a temporary Supreme Court commission to hear cases transferred to the Court in order to reduce the Court's case backlog, and authorizes the General Assembly to create similar temporary commissions in the future.	Potentially obsolete	The General Assembly has not established a Supreme Court commission since 1883. <sup>3</sup>
Art. V, Sec. 8	Establishes term limits for members of Congress.	Unconstitutional	The U.S. Supreme Court has ruled that the states may not impose term limits on members of Congress. <sup>4</sup>
Art. VIII, Sec. 2b	Authorized the state to issue bonds for the purpose of compensating World War II veterans.	Potentially obsolete	Authority to issue the bonds expired in 1951. Some matured interest coupons remain outstanding. <sup>5</sup>
Art. VIII, Sec. 2c	Authorized the state to issue bonds for state highway construction.	Potentially obsolete	Authority to issue the bonds expired in 1962. Some matured bonds and interest coupons remain outstanding. <sup>6</sup>

<sup>2</sup> Steven H. Steinglass and Gino J. Scarcell, *The Ohio State Constitution: A Reference Guide* (Westport, Conn.: Praeger, 2004), 193.

<sup>3</sup> Steven H. Steinglass and Gino J. Scarcell, *The Ohio State Constitution: A Reference Guide* (Westport, Conn.: Praeger, 2004), 193-194.

<sup>4</sup> *U.S. Term Limits v. Thornton*, 514 U.S. 779 (1995).

<sup>5</sup> Commissioners of the Sinking Fund, *Semi-Annual Report for the period July 1, 2013 through December 31, 2013*, at 57. Available at: [ohiotreasurer.gov/Documents/Investor/csf\\_semiannualreport\\_12-31-13.pdf](http://ohiotreasurer.gov/Documents/Investor/csf_semiannualreport_12-31-13.pdf), accessed March 12, 2014.

<sup>6</sup> Commissioners of the Sinking Fund at 57.

Citation	Description	Reason for inclusion	Explanation
Art. VIII, Sec. 2d	Authorized the state to issue bonds for the purpose of compensating veterans of the Korean Conflict.	Potentially obsolete	Authority to issue the bonds expired in 1959. Some matured interest coupons remain outstanding. <sup>7</sup>
Art. VIII, Sec. 2e	Authorized the state to issue bonds for capital improvements.	Potentially obsolete	Authority to issue the bonds expired in 1964. Some matured interest coupons remain outstanding. <sup>8</sup>
Art. VIII, Sec. 2f	Authorized the state to issue bonds for certain public improvements.	Potentially obsolete	Authority to issue the bonds expired in 1972. Some matured bonds and interest coupons remain outstanding. <sup>9</sup>
Art. VIII, Sec. 2g	Authorized the state to issue bonds for highway construction.	Potentially obsolete	Authority to issue the bonds expired in 1989. Some matured bonds and interest coupons remain outstanding. <sup>10</sup>
Art. VIII, Sec. 2h	Authorized the state to issue bonds for development of various state government functions.	Potentially obsolete	Authority to issue the bonds expired in 1970. Some matured bonds and interest coupons remain outstanding. <sup>11</sup>
Art. VIII, Sec. 2i	Authorized the state to issue bonds for capital improvements.	Potentially obsolete	The state has issued all of the bonds authorized under this section. Some matured bonds and interest coupons remain outstanding. <sup>12</sup>
Art. VIII, Sec. 2j	Authorized the state to issue bonds for the purpose of compensating veterans of the Vietnam Conflict.	Potentially obsolete	Authority to issue the bonds expired in 1977. Some matured bonds and interest coupons remain outstanding. <sup>13</sup>
Art. XI, Sec. 14	Specifies the General Assembly district boundaries to be used until January 1, 1973.	Expired	Those district boundaries are no longer used for any purpose.

<sup>7</sup> Commissioners of the Sinking Fund at 57.

<sup>8</sup> Commissioners of the Sinking Fund at 56.

<sup>9</sup> Commissioners of the Sinking Fund at 56.

<sup>10</sup> Commissioners of the Sinking Fund at 56.

<sup>11</sup> Commissioners of the Sinking Fund at 56.

<sup>12</sup> Commissioners of the Sinking Fund at 53 and 56.

<sup>13</sup> Commissioners of the Sinking Fund at 57.

Citation	Description	Reason for Inclusion	Explanation
Art. XIII, Sec. 7	Requires a majority vote of the electors to approve an act of the General Assembly authorizing associations with banking powers.	Potentially obsolete	The Ohio Supreme Court has ruled that this section applies only to acts of the General Assembly that authorize banks to issue currency. <sup>14</sup> State banks no longer issue currency because when the federal government created a national currency, it imposed a tax on state bank notes in order to discourage banks from issuing them. <sup>15</sup>

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<sup>14</sup> *Dearborn v. Northwestern Savings Bank*, 42 Ohio St. 617 (1885).

<sup>15</sup> The National Bank Act, 13 Stat. 99 (1864), and amendments, 13 Stat. 498 (1865). See Richard S. Grossman, "U.S. Banking History, Civil War to World War II," *EH.net Encyclopedia*. (Robert Whaples ed., March 16, 2008). Available at: [eh.net/encyclopedia/us-banking-history-civil-war-to-world-war-ii](http://eh.net/encyclopedia/us-banking-history-civil-war-to-world-war-ii), accessed March 17, 2014.