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24 JAN. 1968
6 FEB. 1968
17 APRIL 1968
19 NOV. 1968
19 DEC. 1968

MINUTES OF COMMITTEE MEETING

The Committee to Make a Study of the Constitution of South Carolina, 1895, met at the State Board of Health, Columbia, South Carolina on Wednesday, January 24, 1968 at 2:30 p.m.

The following members were present:

Senators-

Richard W. Riley
Marion Smoak
John C. West, Lieutenant Governor

Representatives-

J. Malcolm McLendon
W. Brantley Harvey, Jr.

Governor's Appointees-

Sarah Leverette
T. Emmet Walsh
Huger Sinkler
W. D. Workman, Jr.

Staff Consultant-

Robert H. Stoudemire

MR. WEST: The meeting will come to order. Has everybody got Working Paper #12 on Amendment? That's where we start.

MR. McLENDON: Mr. Chairman, before you get into that. I've got a copy of the House Judiciary Committee's report to the Judicial Council. It's a report from the Committee on improvement of the State's judicial system. I wondered if maybe it would be of benefit to have it in Bob's files or somebody's files.

MR. STOUDEMIRE: There's no objection to our Xeroxing it?

MR. McLENDON: No, no, it's public information.

MR. STOUDEMIRE: Gentlemen, of course, you know the first thing is what I always call the individual amendment procedure and in South Carolina, as you will know, it's two-thirds of the General Assembly, to the public, a majority voting on the amendment and then back to the General Assembly with this new provision approved last year which gives you the right to allow an amendment to be approved only within a county if it concerns bonded indebtedness. So that is the thing

we're working with. Over on page 4, I did point up, based on the procedures in a lot of the other states, some three or four---I believe it's about seven or eight points that we might want to discuss. Some of them, probably, will be agreed to or disagreed to, hurriedly, but I think it would cover all the possibilities. I'm assuming that we've still got to have a procedure for individual amendments.

MR. WEST: The four questions on page 4.

MR. STOUDEMIRE: Yes, and the first one, John, really is for submitting an individual amendment is a two-thirds approval of both Houses the desired majority. Some states use three-fifths, some use a majority.

MR. WEST: Most of them are more than a majority.

MR. McLENDON: Isn't it two-thirds now? Let's leave it like it is.

MR. STOUDEMIRE: That would keep us within the main stream of thought.

MR. RILEY: I move we keep the two-thirds.

MR. STOUDEMIRE: Now, a few states require a General Assembly, before you can submit, to approve an amendment in more than a session, but it seems to me that two-thirds is enough protection. O. K. Now, accoriding to our individual amendments,"a majority of those voting on the question" as opposed to the election.

MR. WEST: I don't understand that.

MR. STOUDEMIRE: On a constitutional convention, it has to be a majority of those voting at the election. Now, here on amendment, it's a majority of those voting on the issue and the fact that 100,000 people didn't vote has no bearing.

MR. RILEY: On this issue. If they voted, then they'd be considered---

MR. STOUDEMIRE: I'm assuming that we want to keep it like it is.

MR. RILEY: It's on the question now. I think that's about right.

MR. WORKMAN: It would be confusing to try to explain it, too.

MR. STOUDEMIRE: Now, we are unique in South Carolina whereby that which has been approved by the voters must come back to the General Assembly for a second ratification. I've given you a few figures

here. "Through the 1964 election, the South Carolina General Assembly has failed to ratify 77 amendments approved by the voters; 17 of these have been statewide and 60 that I classify as local." Most of your statewide was really, in one way or another, have pertained to bienniel sessions. If you propose an amendment to have the Legislature meet once every two years, then you've got to propose amendments to your budget---it takes you two or three sections.

MR. McLENDON: Well, if the Legislature has saved the public from session once every two years---

MR. STOUDEMIRE: There have been a few occasions where the local people disapproved and the statewide vote carried the issue, you see, and there have been occasions where the local people disapprove, but the statewide vote approved and the next General Assembly approved. They used the statewide vote. Of course, as you know, this gives you a different General Assembly voting on the ratification than the one who voted to propose.

MR. RILEY: It would be easy to simplify that, but I would be reluctant to upset the---

MR. SMOAK: I don't see any need to change it.

MISS LEVERETTE: I believe if the people have said what they feel about it, I don't think the General Assembly ought to be in a position---even though it's a different General Assembly for the most part. I still think if the people have spoken and they want something, I think it sort of hits at your basic Democratic process.

MR. STOUDEMIRE: I feel like Sarah. I can get more excited on this point than any one in the Constitution. I don't think the General Assembly has the right to keep from doing that which the people in a free election have approved.

MISS LEVERETTE: Even if it's bad for them.

MR. RILEY: Except in the situation where a local area votes two to one against it and it just pertains to the local area.

MR. WALSH: In the present situation if the local area approved it, it would pass and if they disapproved it, it wouldn't pass.

MR. STOUDEMIRE: Bonded indebtedness only. Mr. Chairman, I can't figure out why the General Assembly ever submitted bienniel sessions to the people four times and then not ratify. This was before World War II.

MR. WORKMAN: The difference there, Bob---it's awful difficult for a Legislature to deny to the people the right to vote on a proposal and this is the argument for submitting. The guy may be for it or against it, individually, as a legislator, but he is hard put to take a position that we're not going to let the people even decide on and then when another Legislature comes in, then he says, "my position is opposed to this and I'm not going to vote to ratify". I'm inclined to agree with Sarah on this with this possible exception, if as a general rule of political procedure (Bob, you can check me on this) but on the adoption, initial adoption of a Constitution, a majority prevails. On changes of an existing Constitution, it usually requires a higher, or a two-thirds vote to change. Now, in this instance, I would say that if the Constitution were to be amended without ratification by the General Assembly, then we might give consideration to requiring that approval by the voters to be in the order of some magnitude greater than the simple majority. That is, if they approve by two-thirds vote, I'd say it's not necessary for it to come back. This is a philosophy that---

MISS LEVERETTE: I'd go along with that because a majority may be pretty easy to get.

MR. WALSH: I think I'd rather leave it like it is. If you have that, a majority of the people can't have an effective expression, then we've pretty well destroyed democracy.

MR. STOUDEMIRE: Gentlemen, just for your information. New Jersey had a simple statement. Assuming that you did not ratify the second time, "the same shall become part of the Constitution on the thirtieth day after the election" is the type gimmick that they use to pinpoint when an amendment that has been approved by the electorate becomes effective. You vote in November, then most state Constitutions have a device by having a wording in the Constitution that it shall be effective so many days after the election unless the amendment itself specifies a time. You see, we don't need that now because the ratification determines the thing, you see.

MR. WEST: I think one thing that might be important. Is it our intent to prohibit amendments applicable to special counties, individual counties?

MR. STOUDEMIRE: You want to go on and discuss that as part of this?

MR. WEST: It seems to me like that if we're going to have---if we're not going to permit that, maybe we ought to have that point clarified before we get into the amendments.

MR. WORKMAN: I think the approach that we've made thus far would treat the Convention as a statewide document except the classification of counties, but I would say that approaching the bonded indebtedness as we have, that there would be henceforth no need for having a

county given the opportunity to vote by itself and I'm kind of apprehensive of having the State Constitution subject to amendment by some agency less than the State itself.

MISS LEVERETTE: As Bob has said in here, if you use applicable general laws, a general statement, you won't have that arising.

MR. SMOAK: I think we would want to discourage that, anyway.

MR. WALSH: I think if you carried it to the ultimate, you wouldn't have a State Constitution.

MR. STOUDEMIRE: This is what worries me.

MR. WEST: The point I'm making, isn't basically the great majority of the instances where there was a failure of ratification was in local amendments, wasn't it?

MR. STOUDEMIRE: Yes. I think some of these things that they never intended using. It was just in case .

MR. WORKMAN: Some of them were done, John, you may recall, with respect to withdrawing from the Constitution the law on public school attendance.

MR. STOUDEMIRE: We had about seven in that package along with the statewide.

MR. WORKMAN: Each county was hedging its bets, you see.

MR. WEST: We had some amendments that we didn't ratify until necessary.

MR. RILEY: Mr. Chairman, as a majority of one I will change and move that we eliminate the necessity of a ratification, but leave it as a simple majority, as Emmet suggested, on the vote of the people. Two-thirds of each House of the General Assembly plus a majority vote of the people plus a proviso similar to what Bob read and suggested.

MR. WEST: Thirty, sixty or ninety days after it's automatically effective.

MR. RILEY: And I would probably say, "from the date the election results are declared" or something of that nature in case you got into the problem of a recount and all.

MR. STOUDEMIRE: Would you also buy that the amendment could specify a date?

MR. WEST: Yes. "Unless specified in the amendment, it shall be effective sixty days after the results of the election are declared".

MR. SMOAK: I think that's necessary. You might run into some technical problems.

MR. RILEY: John, would you say sixty or thirty? Sixty would throw you into your new Legislative session.

MR. WEST: Maybe thirty days.

MR. RILEY: That might be better.

MR. WORKMAN: There's one point that comes up. A great many constitutional changes will necessarily have to be accompanied by statutory changes. Sixty days would bring these things into the same time. It might be well to have them effective at the outset of the Legislative session so that they could adjust the statutes.

MR. STOUDEMRIE: I think this is significant. Especially on a controversial thing. That you can get that ball rolling just as soon as the General Assembly comes in.

MR. WEST: You recommend the thirty days?

MR. STOUDEMIRE: I would. Why wait?

MR. WORKMAN: I was thinking in terms of sixty.

MR. STOUDEMIRE: Sixty, it doesn't make any difference.

MR. WEST: Let's say sixty days.

MR. McLENDON: It's all right.

MR. STOUDEMIRE: Another point in here. The South Carolina Constitution now says the amendment shall be voted on---"the people who are qualified to vote for the General Assembly" shall be the ones who vote on an amendment and I think the rest of our language---we've just been talking about qualified electors, have we not?

MR. WORKMAN: Remove that specialization with respect to---

MR. STOUDEMIRE: I would think that that would be all we'd need to say here, would it not?

MR. WORKMAN: Bob, I don't mean to anticipate something you may be coming to, but I think we ought to give opportunity for the holding of constitutional elections at times other than general elections.

MR. STOUDEMIRE: That's coming up, Bill. I have listed here as question 6. I've checked a good many constitutions and all they say is that you can propose amendment or add an "s", either way you want to take it,so this brings us down to this business of article by article. I mean if you want to substitute a whole article. Now, I think I could argue that the word "amendment" doesn't have a restriction. If you want to propose a change to--substitute a new article one, that you could interpret the word "amendment" this way, I don't know, but I don't find any language in other constitutions where it specifically says that an amendment can equal an article and I don't know if we need to discuss this.

MR. WORKMAN: Well, we've got some cases---I don't know what the court rulings have been, but I know the issue has been brought up from time to time challenging the constitutionality of an amendment, of a vote on amendment because it said it amended more than one section and it did so by only one vote instead of two or three votes. My feeling is that we ought to insure the opportunity to amend by article if that be our desire so that we can go in as we've intended to do and package these things in Debt and Taxation or whatever. Right now, a strict interpretation would forbid this.

MISS LEVERETTE: That letter that Huger got last year from Fordham. He seemed to be of the opinion that we were confined to the amendment by amendment procedure. That it could not be interpreted to take in any more.

MR. STOUDEMIRE: We have amended as many as three sections of the Constitution in an amendment, but they all have pertained to the same subject like 8-7 and 10-5 and if it's a municipal thing, it might even include 2-13.

MISS LEVERETTE: Here's an interesting case. Bethea vs. Dillon. "A single amendment to the State Constitution including by reference an amendment to another section does not violate where there's reference to only one subject".

MR. STOUDEMIRE: It still doesn't quite say that you can just propose an amendment and bring up a new section 1 with thirty sections.

MR. WORKMAN: That annotation hinges on the germaneness of the subject.

MR. RILEY: One subject.

MR. STOUDEMIRE: Also I've thought about, if you wanted to include an article by article approach as well. I worked on that thing an hour and I'm still not satisfied with how you say it. I've got here "including an entire article" and yet I don't like it. "An amendment or amendments to this Constitution, including an entire article may be proposed".

MR. RILEY: Bob, it may well be that that one question would be the main thing this Committee could get passed in the General Assembly this year. To present and have approved for future revision of the Constitution. That's right important for us to try to work that out.

MR. WEST: Let me see if I'm following you correctly on that. Dick, what you have in mind is to have a one-short amendment of the entire Constitution. To have the present Constitution amended so that we could substitute an entire new document in one vote.

MR. RILEY: Well, I was thinking article by article. Of course, that would be all right, too, but one complete article to replace another article and under this interpretation you could include other---

MR. WEST: I believe the consensus is that we want to allow an article by article amendment. I believe that one time---when Huger gets here we can refresh our memory---he had worked out a suggestion that we also now propose an amendment that would allow the voters at one time on one occasion at a designated election date to vote on the substitution of the entire Constitution, to amend the entire Constitution by substituting---

MR. WORKMAN: That was proposed in the 1950 Committee Report and I have got here the Joint Resolution by which they proposed to bring this about. Joint Resolution so as to add Section 2 and so on. "To provide for the submission to the qualified electors of a new Constitution as an entirety to be voted on as a whole and to dispense with ratification." This was drafted by Judge Lide.

MISS LEVERETTE: This is what Sinkler's---his would suggest the possibilities of securing both Legislative and popular approval in 1968 of an amendment which would alter the constitutional provision for such an amending process as follows:" Permit the submission to the people of a complete Constitution to be voted upon as a whole, allow such referendum to be held at a special, rather than a general election and include with the '68 amendment the text of the particular constitutional draft to be voted upon in the ensuing special election". I think that was the one you were referring to.

MR. WEST: Right. I think it's good to get that, but I think the question right now is, do we all agree, whether this verbiage is what we want, the thought is that we should allow at least an article by article amendment. Is that the question that we decided?

MR. WORKMAN: Yes.

MR. WEST: Everybody agreed on that.

MR. STOUDEMIRE: Now, we agreed on the idea that the first proposition on the ballot could be a substitution of Artile I, only, and not I and II.

MR. RILEY: I think you could have "consolidation". Use the word "consolidation" in there. You're going to have so many questions like in this Bethea case. If you want to re-write Article I, you might, just by necessity, have to do something to Article VI. Isn't that right, Bob?

MR. STOUDEMIRE: Well, this is your difficulty with amending Article by Article. I don't know if you can amend Article I. Let's say you amend Article I and XIII. That they approve I, but they kill XIII and you've got to make sure that one can live without the other.

MISS LEVERETTE: Mr. Fordham made a comment on that. He said he was not rendered lachrymose by the poor showing of Article by Article procedures.

MR. RILEY: The General Assembly could present to the vote of the people changes or amendments to the Constitution under one vote or one section, all pertaining to the same subject matter.

MR. STOUDEMIRE: I was thinking that maybe an amendment to say something to the effect that one or more articles. As a means of explaining your word "amendment", you see. That you can submit an amendment comma which may include one or more articles comma--- something like this, you see, to show that you had some idea concerning the word "amendment" more than substituting 6 for 4.

MR. WORKMAN: Well, it might be desirable---I don't know whether this should be spelled out or not, but the essence of what we're driving at is the opportunity for the people to approve a new article which is inclusive in a given area of subject matter, whether it be Executive, Judicial or whatever. In approving that, they not only approve the content of the new article, they approve the necessary alteration or deletion of references thereto in other articles. This ought to be spelled out so that they're put on notice that if you approve this article on bonded indebtendess in 10-5 or whatever you call it, it's going to have the effect of nullifying page 3 or something so it still ought to be spelled out. I don't think we necessarily have to go into each one at the same time. Say this is the package, it accomplishes this affirmatively, negatively, it eliminates the other.

MR. RILEY: But, in that one vote, carrying your idea forward, the voter could come in and vote "yes" on the proposal regarding bonded indebtedness and vote "no" on the proposal regarding the court.

MR. WORKMAN: Yes. If he voted "yes" on bonded indebtedness, not only is he voting on the change in 10-5, but he's voting on a change of 8 insofar as it relates to that topic.

MR. WORKMAN: If we're going to change, we are not hidebound by existing language because we're going to knock it out. If we can find a more general term or approach to it, it would serve our purpose.

MR. RILEY: I like the idea better of taking it by topic or subject matter because you might really find the occasion that the public would be generally opposed to one particular thing and in favor of the others.

MR. WEST: In other words, what we want to say is that articles may be proposed so long as they are submitted to the people in clearly stated terms so that a proper expression or a proper vote can be had. That's sort of what we're getting at.

MR. SINKLER: And that they confine themselves to one basic objective.

MR. RILEY: And that's hard to define, but that's it.

MR. SINKLER: I think it's a wonderful idea because in the old days to amend the debt limitations---7 of 8 and 5 of 10 instead of combining them and then by mistake they amended 2 of 8 instead of 7 of 8, so the court took the bull by the horns and said that obviously this election has got to be given a meaning, the Legislative intent has got to be carried out and since it is in conflict, the others by necessary implication are repealed, but I think that particular decision broadened slightly the scope of it. I think you should do it here just as you're suggesting. I think they use the word "objective" rather than "subject". It might be well to look at one or two of those cases.

MR. WALSH: This thing just says that "if two or more amendments shall be submitted". It really doesn't say that they have to deal with the same subject. "They shall be submitted in such a manner".

MR. RILEY: What this is saying, is if you've got two questions where you want to vote "yes" on one part and "no" on the other, then you've got to break it down into two different questions.

MR. SMOAK: The problem comes in that they might be so related that the outcome of one might affect the other.

MISS LEVERETTE: Like your Superintendent of Education amendment.

MR. STOUDEMIRE: We might be talking about something that we won't be faced with. As we re-work this thing, we're putting things back into a proper subject matter heading a little better and about the only overflow that I can see at the moment may concern the veto and I believe that we do the veto in the Legislative Article, really.

MR. WORKMAN: We could say something like this. "Amendments relating to more than one Article shall be submitted separately".

MR. WEST: That's pretty good.

MR. SINKLER: We have a lot of thoughts in some of those Articles, though.

MR. STOUDEMIRE: Huger, now, you see, we won't have 8-7 and 10-5. They'll be all in one.

MR. WEST: Bill, I like that wording.

MR. WORKMAN: It perhaps is not specific enough. It doesn't take care of the situation if, for example, we were to propose under the Executive Section that the term of office of the Governor be six years and that the term of office of the Adjutant General be eight years. Those things ought to be voted on separately. It could be voted on as one under the wording that I just gave.

MR. WALSH: Could we say that "amendments may be proposed to the Constitution on an article by article basis and on an all-inclusive basis where a single subject is involved"? "Or where one or more articles must be amended in order to give effect to the change".

MR. WORKMAN: Let me ask this. With our limited time now, are we not in substantial agreement on what's proposed.

MR. WEST: I was just going to say, I don't want to lean too heavily on Bob, but we're wasting time on a draftsmanship problem here that I don't think we'll solve.

MR. STOUDEMIRE: I beg to disagree. There's a principle in here other than drafting. To me, having a proviso where you can amend an entire article is enough. The voters over long history have essentially approved all amendments for one thing. If you have to amend Section 2 of Article XIII to make it conform with the new Article, all you do is propose two amendments, one for number one and one for thirteen and all you're doing in thirteen is changing two words if that's what it takes. Then you vote on them as separate propositions.

MR. SINKLER: But I think you ought to be able to deal with one Legislative objective in an article. I think you ought to have the alternative which would be either on an article---either dealing with the article as an entirety or with the single objective which could relate to more than one article.

MR. STOUDEMIRE: ---pertains to one subject, it can be treated as one, even if it involves more.

MR. WALSH: That's the point.

MR. STOUDEMIRE: We do have a legal history on that.

MR. SMOAK: Isn't there one other safeguard you need, Bob? What about this situation? If you present the voters with two amendments, is it possible---what about a voter who looks at this thing and he reads amendment number one and says, "well, I want to vote 'yes' on that" and then he reads amendment number two and he says, "well, wait a minute here,in case the vote turns out 'no' on number one, I don't want my vote to be 'yes' on number two". Do we need something to---

MR. SINKLER: That's what I was trying to cover with the single Legislative objective.

MR. SMOAK: Well, Huger, that might do it. That just might do it. Language something along those lines. Very definitely I think we have to be careful to protect the voter from a situation something like that.

MR. WEST: Why don't we use Bill's language that "the articles may be amended---"

MR. WORKMAN: "Amendments relating to more than one article shall be submitted and voted upon separately" which, by inference, allows you on anything within one article to be in one package.

MR. WEST: "And a single amendment may be proposed to change more than one article when a single question or subject is involved". That is your thought, isn't it?

MR. WORKMAN: Yes. Actually what we're aiming at at this moment is a revision by an article by article approach, which, once done, would seldom if ever come back for another article by article approach I don't believe.

MR. WEST: Does that give you enough? You can polish that wording up.

MR. STOUDEMIRE: We want the long time provision that you can just have a simple amendment. We want the new concept that you can amend an entire article and then the third concept, that you can amend whatever is necessary to amend in a single vote provided it pertains to a one subject matter.

MR. RILEY: Bob, let me read a quick draft here of what I would suggest as far as subject matter. It's not thought out, but "two or more amendments". I'm trying to use this language and turn it around. "Two or more amendments may be submitted at the same time to the electors provided that the entire amendment shall pertain to the same subject matter". That's generally what I'm trying to say.

MR. SINKLER: "Each amendment."

MR. STOUDEMIRE: You have to change this first amendment here, "Two or more propositions" or something.

MR. RILEY: What I'm trying to do is take this same thought in this one and say where this was not permitted before, it's permitted now, however it's got to involve the same subject matter.

MR. WEST: If you will give him that wording---is there any disagreement in principle? We have the three thoughts that he's going to draft properly.

MR. WORKMAN: Shall we also provide for a single shot amendment?

MR. STOUDEMIRE: What do you mean by single shot?

MR. WORKMAN: Where the whole Constitution---

MR. STOUDEMIRE: No, that would come under major revision, I think.

MR. WORKMAN: We are now proposing alternate methods of amendment that we ought to give consideration to as an approach.

MR. RILEY: What do you think about it, Bill?

MR. WORKMAN: It raises in my mind, without getting to the merits of this approach, the mechanics of it---I wanted to ask Bob this because years ago when I was batting this thing around, the question was, what would the ballot consist of? Would the ballot be a whole Constitution? In New York, was the Constitution submitted to the people?

MR. STOUDEMIRE: No, no.

MR. WALSH: It was available. I think they had to have copies available. But they just voted on the whole deal.

MR. RILEY: I would say that you would have to have one attached to every ballot.

MR. WORKMAN: The way the question is, "The question to be submitted to the voters shall read as follows".

MR. STOUDEMIRE: I don't know. I hadn't seen that, but I would argue contrary. That you vote on a Constitution as duly filed with the Secretary of State on such and such a date. I think you would refer to the official filing.

MR. RILEY: Do we think that's a good thing? I, frankly, don't particular---

MR. WORKMAN: I have some doubts as to the desirability of that approach, but I was wanting to try to clear up this mechanical approach to it. Now, Georgia in 1948 voted on a new Constitution as one document. New York did. Kentucky did. In both those instances,it was defeated.

MR. SMOAK: How did they work it?

MR. WORKMAN: That's what I don't know.

MR. SMOAK : The mechanics of the thing would be awful.

MR. SINKLER: Let me suggest this. Whether I come along and propose that we get around to the point and present a single shot device to this General Assembly or not, apart from that, assuming that we do that---even if it's done, the single shot approach, the authorization of the single shot approach is one vote and the Constitution is another vote, but if you put it in the Constitution, you have just the single vote. I think the double vote is desirable so I'd leave it out of the draft of this Constitution.

MR. WEST: I'm inclined to think so, too. Then if some group, generations from now, look over our work, assuming it's adopted, and say, "they were in the jet age and we're in some other age now and we'd like---let's go through the process of amending this so that we can submit an amended Constitution".

MR. SINKLER: Let them have the double. I expect to personally vote for an amendment to Article XVI which would permit the submission of the outcome of this Committee's work to the people. I expect to propose it. It may not get to first base, but at least we have given the voters two cracks at it. We've given the voters, first of all, a crack at whether they'll even buy our method of adoption. Then, we've given them the chance to adopt the Constitution itself, but if we put in this Constitution that it can be done by the single shot amendment, we've limited the vote to one vote. I don't think that's good.

MR. WALSH: I think you're probably right. Just like you're submitting something to them, more or less on a take it or leave it basis.

MR. WORKMAN: What concerns me is that the intent of all of us here is to bring about desirable changes in the Constitution as early as praticable. Now, the only thing that I can see being done positively at this session of the Legislature is to lay the groundwork for following whatever course this desirable revision might be accomplished. In doing that, I would say it would be desirable to alter the amending process so that we provide for these alternative methods of amendment. By piecemeal approach that we are now doing, by the article by article approach, by retaining, certainly, the convention method, and possibly submitting one full Constitution to them, whether it be drafted by this Committee and approved by the Legislature or be drafted by the Legislature per se.

MR. RILEY: Here's the chance you're taking right there. You're taking the chance of never getting this out of the General Assembly to start with and of the people possibly beating the amendment to permit the amending. I don't see, frankly---that's what is going to beat the Constitution, having everything lumped together. Everybody's going to have his pet peeve.

MR. WORKMAN: That's what defeated it in New York. You think, then, that the people would not accept the one shot---would not give their approval to this method.

MR. RILEY: I don't think the General Assembly would to start with. I would consider it very strongly, but I'm afraid it wouldn't get started to start with and I don't know---in my opinion, subject matter by subject matter or article by article is a more desirable way.

MR. WORKMAN: Huger was---wanted to submit the results of this---

MR. SINKLER: Not as a part of---

MR. WALSH: You ought not to be able to do it as a completely separate part of any proposed Constitution try to submit to them the question of whether or not they would vote on adopting this Constitution.

MR. STOUDEMIRE: Bill, back to your original question. I think the New York idea here "Any proposed Constitutional amendment" and I would say "any proposed series of things coming from the Legislature or anywhere else, when adopted by the Convention shall be submitted to the people in the manner prescribed by the originating group". I think that would clear it up and would give them the right to say, "You hereby vote on this package as duly filed with" whoever you wanted to file it with and that's the way this one was submitted. "Shall the full new Constitution adopted by the Constitutional Convention and the Resolution permitting the same, be approved" and

they do refer up here to an official copy attached hereto, but I don't think this means the ballot.

MR. SINKLER: I'll go along with you on your article by article method of revising. My remarks are predicated on the assumption that the work of this Committee has been adopted and this is the Constitution of South Carolina we're talking about. I'll go with you on your article by article, but I won't, I'm not in favor of the single shot thing being in this document.

MR. HARVEY: What are you going to put in this document we're going to submit to the people?

MR. SINKLER: Well, now, frankly, my position is exactly diametrically opposed to what I've been arguing for this document when it comes to trying to implement the work of this Committee.

MR. HARVEY: What you're saying is we can do it in one shot this time, but not hereafter.

MR. SINKLER: No, I'm not saying one shot this time at all. To get the one shot presentation takes both barrels. I've got to get through the amendment allowing me to do it and then I've got to vote it on top of that.

MR. RILEY: Take four years.

MR. SINKLER: Take at least that length of time. We can't be effective until 1972, assuming that this thing would work which I don't know whether it would work or not.

MR. HARVEY: I don't quite follow you. Isn't that true whether you put it in the document we're going to propose to the Legislature or not.

MR. SINKLER: As I understand it, we're talking what we are writing and not what we have now.

MR. STOUDEMIRE: We're talking about a new Article XVI.

MR. SINKLER: We're talking about what we're writing and not how we're going to implement our work. I want to divorce the two.

MR. HARVEY: I agree. That's why I come back to my question. If you're not in favor of putting it in this document we're going to recommend, but you are in favor of amending the present so as to submit this document in one shot---that's what I'm saying---

MR. SINKLER: No, I'm not inconsistent at all because I've got two shots. I've got to have two shots to do it my way.

MR. WALSH: He's in favor of the two shot process, not the single shot.

MISS LEVERETTE: One thing about what Huger's talking about is that we've got a mess to straighten out here now. We hope it will be a whole lot better if it's accepted and then later on the method that will be used to amend that one would be whole lot easier than the present one we're working with.

MR. HARVEY: I don't agree with that. I would hope that this present document might last 75 years until you're ready to look at the whole thing.

MISS LEVERETTE: That's what I say, but if we use---now, whatever method we decide, if we do decide to recommend a method for amending this Constitution, that's one thing, if we get that straightened out, then make any provision that we put in the new Constitution, I would say, it could be a much simpler---I don't think we ought to put all these things in there, all these different methods for amending. I think we could make it a simple, a convention, article by article.

MR. HARVEY: Of course, I don't agree with you. I think if we find ourselves here in 1968 needing possibly to cast a vote on the entire document as approved by this Committee and submitted to the Legislature for approval, I don't see why we shouldn't look forward and anticipate that this may again need to be used in future years and therefore we should incorporate this same method of changing the Constitution.

MR. McLENDON: But that one provision in the Constitution---Dick's idea is and I probably agree, that that one proposition might kill the other work.

MR. RILEY: I think it would.

MR. McLENDON: I think it would, too.

MR. SINKLER: All you're doing is putting your Constitution on a parity with the statute.

MR. STOUDEMIRE: Historically, gentlemen, we have had two basic ways of changing a State Constitution. An individual, small amendment like changing the debt limit from fifteen to twenty per cent and a Constitutional Convention when you want a fundamental, overall change. NOw, thus far, we have agreed to keep the individual amendment process and also to broaden this so that a complete article can be substituted and I would assume that you would keep the Convention process still and it seems to me this is enough. If you could substitute a whole article, because I don't believe that if the Legislature will pass a new Constitution permitting it, it's going to get whipped.

MR. RILEY: What Huger is saying would amount to a Constitutional Convention consisting of everybody in the State.

MISS LEVERETTE: What's wrong with adding to our present method of convention and piecemeal or amendment by amendment, adding the article by article approach and clarifying this Section 2 so that you can use one amendment for propositions dealing with the same subject matter and have those three methods. With a new Constitution.

MR. WALSH: I think that's fine. I would stick with that. We have another question that we are discussing in connection with what ought to be in this Constitution, that is, we're discussing the procedural question of how shall we go about adopting the work we've done here?

MR. SINKLER: I don't think we're at that point, are we?

MR. WALSH: That's really what we're doing, when you say that we will submit this whole thing. We'll vote on whether or not we'll submit the whole thing.

MR. SINKLER: I'm not at that point at all. I simply said that, as a means of illustrating my objections to including in what we are drafting, that which I think might be the method of implementing the work of the Committee because to accomplish my objective I will have run the gamut of the Legislature once and the people twice. I'll have to get the people twice, but you're doing is to say let's write into this Constitution something so that you only have to run the gamut of the Legislature once and the people once.

MR. WALSH: I don't think we ought to put in this Constitution as a part of the normal amendment process the ability of, really a Committee of the Legislature, of completely re-writing the Constitution and then just submitting that as a body to the people.

MR. SINKLER: I agree 100 per cent.

MR. STOUDEMIRE: Mac, I think if we can agree that we have the individual amendment process, then we agreed on the article process and then that the convention process ought to be retained, then we can go ahead. Now, if anyone wants to let the Constitution be amended by the Legislature proposing a completely new document---maybe we need to ask that question and if the answer is "no", then we can proceed, I think.

MR. WORKMAN: We're arrogating to ourselves certain prerogatives that we're not willing to share with the future generations and I think that that may be---but nevertheless I think that as we look to this

article of the Constitution which provides alternate means of revision that we should approach it with the idea that those alternate methods of revision should be imbedded in the Constitution for the use of future generations and also be changed, that the present Constitution be changed so that we can immediately avail ourselves of whichever of these that we choose to follow, but I don't see where we can, in good conscience, say we want to follow one way, but we haven't got enough faith in the people to come to let them follow the same way that we follows.

MR. SINKLER: Bill, you missed the point entirely because in order to put ourselves in the position of submitting it as a single shot, we've got to run the gamut of the Legislature, twice the people and then we have to run the gamut of the people again on the submission so we've had two votes of the people. What you're trying to say is that if we incorporate this single shot thing into the Constitution those people will be able to do exactly what we want---they can amend the Constitution by a single shot method. Put the single shot method the way we're doing. We're not changing the picture for them an iota.

MR. STOUDEMIRE: John, I think we're to the point as to whether, to find out---as an overall amendment process we wish a device whereby the General Assembly can propose a new Constitution. Is that the question?

MR. WALSH: That's really the question.

MR. WORKMAN: Whether a new Constitution, one document, can be submitted to the people.

MR. STOUDEMIRE: Without it going through a Convention and I think that has to be decided before we can move on.

MR. HARVEY: Are we talking about putting it in this document that we're considering submitting?

MR. STOUDEMIRE: Yes.

MR. WORKMAN: We've got those two considerations that we ought to separate in our thinking if not in our action. Whether at this precise moment we're talking about the wording to be incorporated in the draft document that we're submitting or whether we're talking about the procedure to be followed by this group in trying to bring this about.

MR. SINKLER: I'm talking about the word "drafting" in the document that we're working on.

MR. WEST: Then those in favor of putting the single shot provision in, raise your hand. Allowing to put as a part of the draft the single shot provision, namely, to allow a new Constitution by single vote?

MR. SMOAK: I don't see a thing wrong with putting it in.

MR. STOUDEMIRE: Who's preparing it?

MR. SINKLER: The Legislature.

MR. WEST: That the Constitution may be amended by a single vote to adopt a new Constitution. That's it. Is that question clear?

MISS LEVERETTE: That will give us four different methods.

MR. WEST: As a fourth feature of the amendment process.

MR. WORKMAN: By convention, by piecemeal, article by article or by total document.

MR. McLENDON: Now, who selects which one of those methods are to be followed?

MR. SINKLER: The General Assembly.

MR. WEST: Those in favor of having that as an additional provision in our draft, raise your hand. All right, I believe that's a majority.

MR. SINKLER: What you're doing, really, is to make it much simpler now than we've got and I really would like to ask you to reconsider it because assuming we go the single shot route in adopting this--in getting our work implemented, what we will have done would be to go through the Legislature getting the two-thirds Constitutional majority to the existing Constitution to propose the single shot method. That would go to the people. It would have to be ratified by the General Assembly, a different General Assembly. You've got two legislative actions and one action by the people, then, assuming that amendment does become a part of the 1895 Constitution, this document would then go before the people so that you would have had two votes of the people and two votes of the General Assembly.

MR. RILEY: Why do we need to put that in here?

MR. SINKLER: No, they want to put it in the new document. They want the single shot in the new document. Now what you're doing if your vote stands as it is, you're saying that any Legislature could come along and by two-thirds or whatever, you're saying that two-thirds of any General Assembly can haul off and write a Constitution --- You've only got one Legislative action---

MR. HARVEY: Here's the other view of it. We're talking about the idea of submitting to the people an amendment for 1970 saying that to amend the amendment process of our present Constitution, 1895 Constitution, to say that you can submit an entire document to the people for one vote, right. To amend the Constitution of 1895 by adding a new provision that the Legislature can submit an entire Constitution to the people for one vote, right---

MR. SINKLER: But only at a specified time. Not a continuing power at all. Only at a special---my idea when we get to that---I might as well give you my idea when we get to that. For a particular document my idea was that we would amend the '95 Constitution by an amendment which would authorize the General Assembly which convenes in the year 1970 to order a special Statewide election--one single Statewide election--at which this particular document would be submitted. If that document fails, then the effect of that amendment is gone and wiped out forever. It's not a permanent amendment to this 1895 Constitution that I propose. I propose just a single election. Now, what you have done, you have granted the continuing power to one Legislature to amend the Constitution with one vote of the people. The process which I'm going to get into when we finally wind up our work,and may fail, is going to require two-thirds of the 1968 Legislature. It's going to require a favorable vote in the November election. It's going to require ratification in the 1970 General Assembly. It's going to require affirmative action by the 1970 General Assembly in fixing a date and having the special election so the process I'm calling for contemplates three separate Legislative actions and two votes of the people. Whereas, what you have just written calls for but a single Legislative action and a single vote of the people.

MR. SMOAK: Don't we agree that the one shot approach to this thing is the most difficult of all?

MR. SINKLER: I don't see any use in arguing about what we're going to do with our work. What I'm trying to do is what we're going to put in our permanent draft and I think a Constitution ought not to be as likely amended as you all are ending up by doing.

MR. WORKMAN: Let me address myself to that. Your concern is passage through the General Assembly in one session and approval by the people. Now, this same thing can be done by the adoption of a Constitutional Convention which requires simply the action of one General Assembly and the approval---whether it requires ratification if a Convention is called---but the time element that you've got in mind can be shortened, Huger, by submitting proposed change in amendment process '95 in 1968. It could be ratified in 1969 and on a special election called in 1969 a Convention could be submitted, but I don't have the fear of allowing a General Assembly to, on its own motion or by committee or by conference or whatever, to draft a

new Constitution and then submitting that to the people because the experiences that we've had in the last two years, plus the experience that Sarah and I have had for the last twenty years of trying to get something effectively done does not at all support the idea that a General Assembly is going to draft a new Constitution in the course of one session.

MR. SINKLER: Well, I don't want to take up any more time of the Committee, but I think the double vote is desirable. In other words, I'm leaving open to those who come behind us exactly the same situation that we now face, find ourselves in.

MR. RILEY: Do you think the double vote is necessary if it's just a proposition pertaining to one topic?

MR. SINKLER: No.

MR. RILEY: You have no quarrel about that.

MR. WALSH: The only further thought that I could add and I agree with Huger on this question basically, is that if we have a single shot submission as a part of an existing Constitution, then it will enable the General Assembly irrespective of any participation on the part of the public or the Governor, to submit an entire new Constitution.

MR. SINKLER: And it could come at a time of crisis when people would go one way quickly. This process that we call, which I want to see written in as-----.

MR. WALSH: As it is now, regardless of whether we've made any contribution or not, there has been outside participation, outside the General Assembly, in formulating a new document and that new document, if we were to adopt the process, would only come after at least two votes of the General Assembly, two votes of the people.

MR. WORKMAN: A complete new Constitution could be written by the General Assembly this week and submitted to the people in November if they made every question separate. If they could get around the mechanical difficulty and the publishing and printing difficulty, they could do exactly, a complete Constitutional revision, in effect, on fell swoop although there are a lot of little piddling bugs.

MISS LEVERETTE: Which is not much more than the local ones we have had to face sometimes.

MR. RILEY: But the other big difference--the thing that we really ought to seek out is, if they submitted it like that, you could vote for A, against B, for C or vice versa and the big difference in the

one shot deal is you've got to take the bitter with the sweet.

MR. WORKMAN: I'm not a proponent of the one shot method of adopting the Constitution. What I am opposed--we are not consistent if we recommend that as a method by which this group and this General Assembly will proceed yet not accord that same method to a subsequent group and General Assembly.

MR. SINKLER: We are giving them exactly the same privilege. They still have the privilege--we've adopted the Constitution. The year is 1968. They don't like it so they appoint a committee and what does the committee do, it says, "we can't do this thing article by article, we're going to have a single shot situation just the last Constitution group did".

MR. WEST: One other thought. I don't think I would agree with the principle, but do you want to put a limitation that it can only be done once every fifty years then?

MR. RILEY: I personally don't like the one shot thought.

MISS LEVERETTE: Don't you think that a General Assembly would have the same fear that we have in submitting a one shot. They're going to think a long time before they submit something that might have something in it that---

MR. SINKLER: Suppose you have a situation---you've got a period that the country's at war and you've got a crisis because Constitutions are not re-written except in times of crisis. If this gets through, it's a miracle because it's not basically a time of crisis, but Constitutions usually are changed in time of crisis therefore what you're proposing to do is to make action in a crisis much easier. Now, that may be desirable. Frankly, the Constitution to me is something that should be slowly---the process of change and therefore I want to slow down the process and that's why I oppose this single shot thing as a part of the basic law.

MR. WORKMAN: I challenge the historical accuracy of that on times of crisis because our Constitution of 1776 and 1778 were not Conventions. They were Legislative pronouncements. In 1790 was after the Revolution, after the Constitution of the United States had been drafted and things were pretty well simmering down and it lasted until 1865, after the war and 1868 and then our Constitution of 1895 which was not a time of crisis---well---

MR. STOUDEMIRE: "Crisis" may not be the right word, but the thought is correct.

MR. McLENDON: Mr. Chairman, in order to get the parliamentary wheels straightened out, I voted on the prevailing side. I'm going to move to reconsider the vote whereby we adopted the last proposition. If

it prevails, then we can discuss it again.

MR. WEST: All right, the motion is to reconsider. Those in favor of the motion to reconsider, raise your right hand. Four. Those opposed. Five to four. I think we ought to go ahead.

MR. STOUDEMIRE: I believe we decided earlier to take out my point 7 here.

MR. SINKLER: Can I amend that by saying "that to require action of consecutive General Assemblies before a single shot provision can be accomplished". In other words, I would like to have the---

MR. RILEY: You needn't worry. The General Assembly isn't going to pass an amendment to submit to the people a one shot proposition.

MR. SINKLER: I think it's a mistake to put it in there.

MR. RILEY: They laugh at you when you mention a Constitutional Convention and this is more liberal than a Constitutional Convention.

MR. WORKMAN: Except this thing has to originate with the General Assembly.

MR. RILEY: I say the amendment to permit it to originate isn't going to have a chance.

MR. WEST: You're not foreclosed because all of the conclusions here are tentative and frankly, I'd like to see the entire membership---

MR. SINKLER: I think we really ought to get a vote---

MR. WEST: Frankly, I'm a little disturbed. This is, really, I think the first closely contested item we've had and that's right miraculous.

MR. RILEY: But it's the most important thing that we're doing as far as the success of the Committee's concerned.

MR. WALSH: I think if we submit this as one Constitution, we might as well fold up our books today.

MR. WEST: Let's push on.

MR. STOUDEMIRE: Mr. Chairman, I believe we already agreed to take out the local amendment, approved last year.

MR. SINKLER: The Constitution would have to be ratified by the next General Assembly.

MR. WEST: I might go with you on that one. You've got a point. No question about it. Huger moves that the amendment article be further amended by providing that any single shot Constitution be---

MR. SINKLER: Proposed and and voted upon favorably, has to be ratified by the next General Assembly before it can take effect.

MR. STOUDEMIRE: Take effect or submit to the voters?

MR. SINKLER: Before it takes effect.

MR. WALSH: I second that motion.

MR. SINKLER: What I've made you do now is to postpone your new General Assembly set-up for at least two years from your single shot amendment.

MR. WEST: I think that's all right.

MR. RILEY: I appreciate your being honest with what you're doing.

MR. STOUDEMIRE: May I speak to that just a moment. It seems to me if you're going to use this, you'd make two General Assemblies approve it to submit. The General Assembly has prepared a package now and the people have spoken, they voted "yes" and the General Assembly should not be able to set aside that vote.

MR. WALSH: The people may have spoken in the heat of passion.

MR. SINKLER: That's right.

MISS LEVERETTE: Now, you're talking about after. You don't mean by your amendment---

MR. SINKLER: My amendment made it afterwards. I'll buy it either way.

MR. STOUDEMIRE: I don't like anybody setting aside the vote of the people.

MR. RILEY: Let's hold off and let everybody think about the whole thing.

MR. WEST: Since it is so close, let's just tentatively for the sake of getting ahead, with the understanding that we're going to give some more thought to it and take another vote on it.

MR. STOUDEMIRE: Another thought is, do we need a proviso whereby an amendment can be submitted at a special election as well as a general election? A lot of Constitutions authorize an amendment for

the authorizing resolution to say "special"or "general".

MR. WORKMAN: I would say, yes.

MR. HARVEY: There you get into the proposition of acting in heat and passion. Rushing it up.

MR. WORKMAN: Well, you counter-balance that, Brantley, by the over-riding consideration of purely political candidacies and campaigns which detract from thought being given to the Constitution. There's not a lot of sex appeal in this thing here. It ought to be preceded by a period of explanation and deliberation and editorializing and speaking so that the people are aware of it and you're not going to have that in the heat and passion of a gubernatorial campaign or a presidential campaign and I think that the acceptance of the public to the idea of revising the Constitution will be enhanced by submitting it to them at a special election.

MR. SINKLER: I'll buy that as far as a Constitution as a whole. If I'm hung with your revision process, I'll buy that as far as that's concerned because I do think that, hopefully, there would be a special election some day to consider, to pass upon our work and I think it would be better to be done as a special election without political candidacies involved, but when you come down to amendments, I don't think you'd get the people out for an amendment on a special election. I don't think you'd have any more voting than voted for the Treasurer in the Democratic Primary.

MR. WORKMAN: This would be the choice of a time and the fixing of the time would be for a Legislative determination and I don't think that the Legislature, in its collective wisdom, would call for on something approved---

MR. SINKLER: What's the advantage of it if you're going to have the ratifying process afterwards?

MR. WORKMAN: We're not going to have it.

MR. STOUDEMIRE: We voted that out a while ago.

MR. HARVEY: On the whole document. Did we eliminate it on the section by section, article by article?

MR. STOUDEMIRE: Yes, before you came in. Gentlemen, I was thinking about this solely as a means of convenience, of preventing hardship. That the January, 1969 General Assembly could approve an amendment to the Constitution, but then you'd have to wait two years before it can go into effect and I was thinking of this solely from the stand-point that there may be an amendment that really and truly needs to be put into effect five months from now, whatever it may be and this is the idea behind having the right of a special election.

MR. SINKLER: Well, then add a proviso that no such amendment shall become effective until three months after the vote or something like that.

MR. RILEY: Or you can't submit more than one vote a year. In other words, you wouldn't want to have one in February and have another one in April.

MR. WORKMAN: You could put a delay period in following the adoption of the Resolution to submit the thing.

MR. STOUDEMIRE: Some states say that when you do this, that it must be submitted by a date fixed. In other words, the Constitution says it must be done in thirty days or sixty days.

MR. WORKMAN: Or not sooner than thirty days.

MR. RILEY: I would, at first blush, prefer leaving the amending process to the general election. I think it's wise in changing these bond elections, let the Legislature handle those and have special elections and all on the local problems, but when you're messing with the State Constitution, I think it ought to be---the fact that you've got a two year delay or something like that---I think it's not always bad.

MR. WORKMAN: I don't like too much delay, but I do dislike is this over burden of partisan politics which can have a very detrimental effect on what could otherwise be a rational approach to a Constitutional document. We could have Democratic political rivalries going on on the State level, on a national level, if the Constitutional amendment question got involved in that--may properly get involved in it, but I'm thinking now in terms of as dispassionate, or as much as possible, approach to the business of Constitutional revision, apart from partisan politics.

MISS LEVERETTE: Bill, don't you think that might be counteracted to some extent by the fact that you're not going to get people out for a special election---

MR. RILEY: And the soreheads always come out.

MISS LEVERETTE: If it's raining, you're not going to get them out.

MR. WALSH: I would like to see us give a 10% discount on property tax if you vote.

MR. STOUDEMIRE: Gentlemen, I'm an optimist on the thing. I believe that as the role of county government goes back to a local board, that we're going to find more Statewide thinking and end up with more Statewide amendments, assuming that we don't get a new Constitution,

like we did the magistrates. You see, I can't figure out why somewhere along the line that the debt limitations are not voted on one general amendment and raise it 20% and be done with it instead of each little Tom, Dick and Harry submitting his own and I think it's localism and as long as the bill doesn't affect anybody but the locality, it is responsible for it.

MR. WEST: The question is shall we provide for a special election or---

MR. HARVEY: I move we leave it in the general election.

MR. WEST: Those in favor of a general election only, raise your hand. Six. Opposed? Six to three.

MR. STOUDEMIRE: Mr. Chairman, that brings us over to Section 2 on page 7. I still think you need a Constitutional gimmick to tell you how the order of amendments and an amendment is an amendment and so on like this says if two or more, they be voted on separately and so on. Now, this would mean, based on our prior decision, that this whole thing would have to be re-drafted. In other words, I think we still want a vote to be a vote and not hodge podge.

MR. WALSH: I move that this be revised to conform with our previous decision.

MR. STOUDEMIRE: But keep the thought of independent voting on independent issues whether it be article or what not. Mr. Chairman, that brings us then to the question of Constitutional Convention. We are about equal to a majority of the states requiring a two-thirds vote of the General Assembly to submit it, but there are a lot of other questions that we can raise. I've got some of them listed over here on page 8. "Shall the decision to call a convention be submitted to the voters? If so, what majority---"

"Shall the number of delegates be specified in the Constitution..."

"Shall the number be apportioned according to a fixed formula?" meaning the delegates.

"Shall all the other details..." and so on.

MR. SINKLER: Is there any particular objection to 3 of XV, the way it's now worded?

MR. WALSH: I don't think it ought to go back to the General Assembly.

MR. STOUDEMIRE: It doesn't have to. "Whenever two-thirds of the members elected to each branch of the General Assembly shall think

it necessary to call a Convention..." and so on "they shall recommend to the electors to vote for or against a Convention at the next election for Representatives; and if a majority of all electors voting at said election shall have voted for a Convention, the General Assembly shall...". Now, the first question this brings up is the two-thirds a correct procedure?

MR. WEST: Any objection to that?

MR. STOUDEMIRE: All right, your next question then is---you know we've changed gear here---for an amendment, it's two-thirds on the issue. Now, for a Convention, it's two-thirds at the election therefore those who do not vote can kill your calling a Convention.

MR. WALSH: Wait a minute.

MR. WORKMAN: Two-thirds of the membership, not just two-thirds of those voting.

MR. STOUDEMIRE: "...if a majority of all electors voting at said election shall have voted..." you see

MR. WEST: That's what it says.

MR. STOUDEMIRE: This means that if 500,000 people vote and only 200,000 vote on the amendment and all vote"yes", you'd still lose.

MR. SINKLER: You're talking about the Convention only.

MR. STOUDEMIRE: That's what we're talking about.

MR. SINKLER: But this Section 3 of Article XV envisages a special election. It doesn't say it has to be at a general election.

MR. STOUDEMIRE: "...shall recommend to the electors to vote for or against a Convention at the next election for Representatives..." which is your general election.

MR. WALSH: It ought to be voted on the issue.

MR. WEST: We could just say, "if a majority shall have voted for a Convention".

MR. SINKLER: I think you're right. I didn't realize that was in there.

MR. STOUDEMIRE: "...the General Assembly shall, at its next session, provide by law for calling the same; and such Convention shall consist of a number of members equal to that of the most numerous branch of the General Assembly."

MR. WEST: Why don't we insert there "equal and apportioned" because you point our in your discussion that that question's left open. So, if we just insert "equal to and apportioned according to the most numerous branch of the General Assembly" that would do it, wouldn't it?

MR. HARVEY: "Apportioned among the counties".

MR. STOUDEMIRE: Because you see you could right now, theoretically pass a law and I think it would hold up. Let me look at my question, Mr. Chairman. No. 1, two-thirds. We've handled that. "Shall the decision to call a convention be submitted to the voters?"

MR. WALSH: Mr. Chairman, what about this thing about "...the General Assembly shall, at its next session, provide by law for calling the same...". It seems to me that if they submit the issue of a convention and then the people vote for it---

MR. SMOAK: That ought to be it.

MR. SINKLER: You've got to provide---

MR. WEST: You have got to appropriate the money to it.

MR. SINKLER: Absolutely. You've got to provide for the election of delegates.

MR. WORKMAN: There is no self-enforcing mechanism for the conduct of a convention so the Legislature necessarily has to decide that it will be on such and such a date, there shall be an election held. They shall convene in Columbia. They can set their own compensation and working hours when they convene, but there would have to be a starting point on the method of selection and on the convening of the thing beyond which the cenvention itself can take over, but just the simple approval of the people of holding a Constitutional convention doesn't get it under way.

MR. SINKLER: It was deliberately put that way because they wanted that next General Assembly to ratify, in effect, the action---

MR. WALSH: That's the point I'm making. If the people call a convention, we ought to have a provision where, at a certain time, it would come into being. I don't think you ought to have another General Assembly have to vote on whether they're going to have one.

MR. STOUDEMIRE: "...the General Assembly shall, at its next session, provide by law for calling the same...". To me, this means saying that the delegates shall be elected, non partisan, shall be elected by Democrats, Republicans, shall meet at the State House and so on.

MISS LEVERETTE: It says "shall". It seems to me that it's mandatory that they provide by law.

MR. SINKLER: How you going to mandamus the General Assembly?

MR. WALSH: How are you going to enforce that? Suppose they do nothing.

MR. STOUDEMIRE: Let me speak to Emmet's question. A number of Constitutions do say that the convention shall be assembled by a time fixed after the election. Some of them even go so far as to state who is qualified to be a delegate, spell out the type of election, whether it can be a regular general election, whether the parties can get into it, whether it has to be non-partisan and assign to the Secretary of State the responsibility for issuing the call and so on. So, I think it depends on whether we want to leave it broad and general or whether you want to get into spelling out the details.

MR. WALSH: I don't know about leaving it broad and general, but I do feel tht we ought to clarify the thing so that a succeeding General Assembly could not, in effect, nullify a previous vote of the people on the question of convention. Now, what would be required to accomplish that, I'm not necessarily prepared to say at this moment.

MR. SINKLER: Certainly requires a re-write of 3 of XV. I like the idea of getting that second General Assembly involved.

MR. WALSH: Where the people have voted on a convention, they ought be be permitted to go ahead and hold that thing.

MR. WORKMAN: The facts may dispute me here because of the number of times the Legislature has failed to ratify bienniel sessions, but I don't see a General Assembly having the temerity to refuse to call a convention once it has submitted that question to the people, and the majority approved it.

MR. SMOAK: I don't either, Bill. Why leave that void there?

MR. McLENDON: Suppose you say that "it shall meet in Columbia sixty days afterward"and the General Assembly meets, it still could just not take any action to appropriate the money or provide for these others. You would be right back where you are with the present language.

MR. WALSH: Yes and, or you could add to this that "in the event they do not provide, then the Governor shall, by executive order, set a date" and so forth.

MISS LEVERETTE: Well, now the Model has a---I don't know whether this would be applicable or not, but it goes on to state that if the qualified voters voting on the question of holding a convention approves it, they provide right then and there that delegates shall be chosen at the next regular election, not less than three months thereafter unless the Legislature shall have provided by law for the election of the delegates at the same time that the question is presented.

MR. HARVEY: But you wouldn't have a regular election.

MR. STOUDEMIRE: This may be the right idea.

MR. SINKLER: Let's vote on the principle.

MR. STOUDEMIRE: You could provide an alternate means in here to make, that the General Assembly does act. The way this thing is now, the General Assembly would go ahead and do all the details, but now, in case they don't, that if the General Assembly has not acted within X time, that the Secretary of State shall issue the order and you can make him by court order--you can mandamus the Secretary of State--that the Secretary of State shall forthwith issue an order for the election of delegates.

MISS LEVERETTE: You can use the same provision that you would use---

MR. STOUDEMIRE: The delegates then would take over and provide for their own regulations if the General Assembly has not, which I think they have the power to do.

MR. WALSH: I think that's good.

MR. McLENDON: That will take care of it.

MR. WALSH: I make that in the form of a motion.

MR. WORKMAN: I second it.

MR. WEST: Everybody agrees?

MR. SINKLER: I'm opposed.

MR. WEST: I am, too. I'm not going to argue, but a legislator would be a fool not to vote to do it.

MR. STOUDEMIRE: Mr. Chairman, very briefly, I assume this means, then, that we are willing to leave up to the General Assembly the business of saying the delegates shall be non-partisan or it shall be Democrat and a Republican and all the other details of arranging. Now, number 6. "Shall the question of calling a convention appear on the ballot periodically?" A great number of states do this. This habit was

originated before Reynolds vs. Sims, but it does appear so often that I think it needs some thought. This would simply mean fixing a year, we'll say 1970 and every twenty years thereafter, every ten years or something, the question automatically goes on the ballot. "Shall there be a constitutional convention?"

MR. SMOAK: I don't like that idea. It would just force an issue.

MISS LEVERETTE: How long has it been? It's been a long time.

MR. WORKMAN: Well, I suggest consideration be given to the inclusion of a phrase from the fundamental Constitution which provided that at the expiration of sixty years, all statutes and acts shall automatically be suspended. I think that all enactments under the fundamental Constitution were null and void in sixty years.

MR. WEST: Under what now?

MR. WORKMAN: Fundamental Constitutions of 1669. Everything automatically lapsed after sixty years unless you re-enacted them.

MR. STOUDEMIRE: You see, it seems to me that if you give the General Assembly the right to propose a new document, then the people ought to have the same right.

MR. WALSH: That was a point I was going to make.

MR. STOUDEMIRE: And I would not be for it, except for the prior approval that the General Assembly can submit. Then it seems to me, by the same reasoning, you ought to authorize the voters to initiate.

MR. HARVEY: By petition.

MISS LEVERETTE: I think it's just another mechanism. They don't have to have one, but it's a mechanism for every twenty years for bringing this idea up. After all the struggle that has been going on for all these years trying to get something done, if we built that in, it could be submitted.

MR. WALSH: I do feel that any Constitution ought to have some avenue by which the people themselves could express themselves at certain intervals. If, say, within twenty-five years after the adoption of a Constitution, no convention has been called and the people by filing or a petition or something---

MR. SMOAK: That's why they elect members of the Legislature.

MR. WEST: Well, Emmet, I can't see, the Constitution is a basic declaration of rights and it hasn't changed, really, in two hundred years.

MR. WALSH: The people haven't had much choice in the thing.

MR. WEST: But, really, I would hate to think that just because we're going into a space and travel to the moon, that we're going to change our basic rights in the next twenty or thirty years and this document should be---

MR. WALSH: What is a more fundamental right than giving to the people some means of initiating their own form of government? Huger, you probably agree with this senator who, in 1845 got up on the floor of the Senate and categorically denied that he said that he was ever in favor of letting the people determine their own form of government. Said he never had been in favor of it and never would be in favor of it.

MR. SINKLER: I'm afraid I'm rather a cynic. Really, I think the farther you keep it away---

MR. STOUDEMIRE: Certainly, I think your argument for this is not nearly so strong since Reynolds vs. Sims. Of course, we know before Reynolds vs. Sims, the people of this State really had no--could never get the right to express themselves. They might get the right now with a reapportioned Legislature. I don't know. In other words, it was a small group of the people keeping the right.

MR. WORKMAN: Knowing the historic background which led up to Reynolds vs. Sims, would you not say that had the Consfitutions of Tennessee and Florida had a provision which required the calling, submission of that question, at twenty years or thirty years, that we might not have had Reynolds vs. Sims.

MR. STOUDEMIRE: We would not have had it because they would have had a convention and automatically---

MR. WEST: All right, let's---

MR. WORKMAN: The point was that there might be merit to the fact of submitting that question periodically.

MR. WEST: The question is whether we are going to put in the Constitution an automatic submission of the question of a Constitutional convention every twenty years.

MR. SMOAK: Twenty years is too close.

MR. WALSH: Thirty years. So long as you have it some reasonable period of time. That would be three times in a life time.

MR. WEST: Thirty years? Is that the way you want the question put? Those in favor of submitting it every thirty years, automatically, having that provision in, raise your hand. Five. Opposed? Three.

MR. STOUDEMIRE: And this would be based on a petition. Would have to be.

MR. HARVEY: No. Automatically.

MR. WALSH: Only in case one had not been called.

MR. STOUDEMIRE: Now, Mr. Chairman, we come to another one. Some Constitutions say that if a convention adopt a Constitution, then it must go to a vote of the people before it can be effective. Now, our Constitution is silent and the general thought in this State is that the delegates could now proclaim a Constitution. They did in 1895. I don't know whether this ought to be considered as a Constitutional issue.

MR. SINKLER: It's a safeguard to that radical provision that you have just put in there.

MR. WORKMAN: I am constantly amazed at the complete lack of confidence in the people that our elected representatives have. They trust the judgment of the people in sending them to office, but beyond that, stay out of government. I say that if a properly constituted convention is held, persons elected for that purpose under provisions of law, under the stipulations set down by the Legislature, when these people assemble for the purpose of drawing the Constitution, whatever they draw is and becomes the Constitution with no further ratification by anybody.

MR. WEST: Is that your view of the present Constitution or not?

MR. WORKMAN: That happened in 1895. It happened in 1790. It happened in 1787 except for ratification of the State.

MR. SINKLER: I think when you pick out an arbitrary time to fix the voting of a constitutional convention, you haven't got the vaguest idea of what the crisis, or is going to be in existence at that time, you automatically make the setting of a constitutional convention whether you need it or not, I think it ought to be a subsequent vote of the people.

MR. WORKMAN: The people vote on it on the first go round.

MR. WALSH: They don't vote on the changes. I go along with letting them vote on the product.

MR. STOUDEMIRE: As a practical matter, I don't worry about it because I don't believe that we could put a new Constitution in effect in this State now if the people did not approve of it at a vote. I believe they'd rise up en masse. Now, the Wallaces of Alabama might push it through.

MR. SINKLER: We don't know who we're going to have. We may have that type of leader in South Carolina. I think your automatic adoption is a very radical provision.

MR. WORKMAN: It's traditional and you can hardly call tradition radical.

MR. SINKLER: It's not traditional in this State.

MR. WORKMAN: Yes, it is. 1790, 1895. Neither one of those were approved by the people.

MR. SINKLER: I'm talking about your thirty year vote is a radical innovation.

MR. WALSH: People have never voted on any Constitution.

MR. SINKLER: To tie in with the thirty year automatic vote, I move that whatever the product of the convention is, it be ratified before it becomes effective.

MR. WEST: By a vote of a majority of the people in a special or general election.

MISS LEVERETTE: Do you feel that the fact that they elect the members of this convention that that is sufficient, that they do not have to pass on the product.

MR. WORKMAN: Well, the theory behind the drafting convention is that the public in revising their fundamental law select those delegates for that purpose and that purpose alone. They're not electing magistrates or legislators or governors. They're electing people to go to a particular point at a particular time and draw up a fundamental law of that state or nation. Those people go there with that responsibility and I say when they go and discharge it, their product, and is borne out by the weight of decisions that I've come across, it becomes the law.

MR. SMOAK: You don't know what those people are going to produce Bill. They might come out with some harebrained scheme.

MR. WEST: They might come out with a George Wallace or Ben Tillman type thing.

MR. WORKMAN: Who are we to say that they are wrong? They are the people.

MR. WEST: Just because I vote for LBJ, I don't have to agree with everything he says or does and I want the fundamental right to express myself. I may think he's a better President than maybe the opposite party puts out, but when it comes to certain things, I want a maximum

freedom to restrict him.

MR. WORKMAN: All right. Now what you're doing, you're arguing against both democracy and representative government.

MR. McLENDON: No, we're not. You're only giving them one opportunity.

MR. WORKMAN: Representative government, you select your delegates to go for you and bespeak your mind at a constitutional convention. They draw up that convention. That's the purpose for which they were sent there.

MR. SINKLER: Listen, with an automatic thirty year vote you don't know what type of issues are going to come along and you don't know what type of product you're going to have in that convention. You're begging and pleading for a George Wallace to come along in South Carolina is what you're doing which is amazing to me that I'd get on one side of the fence and my distinguished friend on another. I think you've got to give the conservatives who are always outvoted a little chance.

MR. WALSH: Huger, you're overlooking the fact that you're saying that all these members of the Senate and the House don't have enough influence that they can get themselves elected to the convention.

MR. SINKLER: I don't know whether they would or not if you have an automatic situation come up every thirty years, you might have _____ lead that convention and then _____ will the law. Now, who wrote the convention of 1895 when you come down to it? What's the convention of 1895? It's Ben Tillman's dicta plus what was there before. That was no great expression of any vote of the people. I think he did pretty good job. I might be on his side, but nevertheless if you had anything close to demagogue and dictator in South Carolina, you had it in 1895.

MR. WALSH: He got a remarkable degree of cooperation from the conservatives of the House.

MR. SINKLER: Of course he did, but he might not have had it.

MR. STOUDEMIRE: One thing I don't worry about. I don't worry about the automatic. For instance, states that have this, I don't think there's ever been constitutional convention called based on the automatic vote on the ballot. They've voted in some states, but it hasn't worked.

MISS LEVERETTE: You think it's a moot question because it's going to be done anyway.

MR. STOUDEMIRE: Even states that have a petition where you can get constitutional initiative for a convention. You see, you haven't had any constitutional conventions since Reynolds vs. Sims. New Jersey and Missouri are the only two in all these fifty years.

MR. WORKMAN: What about Rhode Island?

MR. STOUDEMIRE: I said constitutional conventions have come up since Reynolds vs. Sims, but they have not come up because of automatic voting rights and they have not come up because the petition originated with the people. They come up because the General Assembly passed them.

MR. WALSH: Keep in mind one thing, though. In Reynolds vs. Sims--- that came about, not because of any fault in the Constitution because the Tennessee Constitution required apportionment according to population. It was because the General Assembly year after year after year completely disregarded and refused to go by the Constitution.

MR. WORKMAN: Without being persuaded, I'll not make an issue of the ratification of the automatic.

MR. WALSH: Make a motion, I'll second.

MR. WORKMAN: I think the built-in, automatic feature is a desirable safeguard to prevent stagnation and fossilization of legislative practices where the people can get in and shake it up every once in a while, but I'll go along with the ratification of the result of that convention.

MR. STOUDEMIRE: You want a statement then that before being effective, it has to be ratified by the people.

MR. WORKMAN: Those conventions which are called or which are submitted--- conventions which are called in compliance with the periodic requirement for thirty year submission shall be ratified by the people.

MR. STOUDEMIRE: You're hooking this to the thirty year thing?

MR. WORKMAN: That's right.

MR. HARVEY: If the Legislature calls a convention, its work does not have to be ratified.

MISS LEVERETTE: I'm like Bob. I think we could leave it as it is.

MR. STOUDEMIRE: The people are going to demand a vote.

MR. STOUDEMIRE: John, number 8. Alaska is the only state that I know that allows the General Assembly to call a convention without vote or approval.

MR. WEST: I don't believe we want that.

MR. STOUDEMIRE: That's a new gimmick put into the Alaska Constitution. The General Assembly of Alaska can say there will be a constitutional convention next November, but then the results in Alaska has to be submitted.

MR. WALSH: I'd say let them call it if they can get it through.

MR. WORKMAN: I think there's enough alternatives.

MR. SMOAK: I think there's enough in there now.

MR. STOUDEMIRE: Now, the last thing here is, you can get into a lot of arguments about what are the powers of a convention once it is in session and Alaska is one of the few states that has addressed itself to this thing. Alaska says, "Constitutional conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people. No call for a constitutional convention shall limit these powers of the convention."

MR. WEST: I don't think you could anyhow.

MR. SINKLER: I see no objection to that language at all.

MR. STOUDEMIRE: Well, there's one difference in this language from what you just agreed to. "...subject only to ratification by the people." You see, you've only said subject to ratification for the thirty year deal and not the convention in general, you see.

MR. SINKLER: I think the work of any convention should be ratified by the people.

MR. WORKMAN: Here we go again now. I yielded on the thirty year thing.

MR. STOUDEMIRE: Or you want to leave it alone.

MR. HARVEY: Where are you now, Bob?

MR. STOUDEMIRE: I'm on the bottom of page 9. This comes up like this. Let's say now, Virginia about ten years ago had a limited convention. This was agreed on in advance to do something. I forget now what it was and the delegates to this convention accepted the limitations and did what the call said and did no more. Well, I

maintain that these people are the people assembled and therefore they could have gone on and done more and that leaves you in a predicament, you see. Or it might be that the General Assembly issues a call to the people that they shall have a convention which shall do anything it wants to, but it cannot change the tax structure. The convention comes into session and they go ahead and change your county lines. I think in some cases they have to because you see if you restrict, you restrict it on the things that you can compromise with. I'll compromise with you on taxes if you'll compromise with me on county lines. If you restrict, you take away the compromise.

MR. WORKMAN: I think the thing ought to be omitted and it ought to be governed by the provisions.

MR. STOUDEMIRE: What is the decision? Mr. Chairman, most constitutions again, which we don't have in ours, have a provision that conflicting constitutional amendments or revisions submitted to the voters at the same election are approved, the amendment or revision receiving the highest number affirmative votes shall prevail. Now, you see, under our arrangement now where it has to be ratified by the General Assembly the second time, you assume that they would not ratify one of the conflicting amendments. Now that the vote shall not go back to the General Assembly---this is what you voted on a while ago---this matter of a constitutional statement on conflicts may have some importance. I don't know.

MR. WORKMAN: This is the presumption of ineptitude on the part of legislatures, which, while true, need not be invited.

MR. STOUDEMIRE: That is in a good many, John. I don't know whether it has any value.

MR. WEST: Unless someone feels strongly, let's leave it out.

MR. STOUDEMIRE: I'm willing for the courts to argue.

MR. WEST: That brings us---

MR. STOUDEMIRE: That brings us down to Working Paper #13 on Miscellaneous, and there are some hard ones in here. I would think that Miss Leverette would like to speak to Section 1 of this one. "No person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector: Provided, the provisions of this Section shall not apply to the offices of State Librarian and Departmental Clerks..."

MR. WEST: On motion of Miss Sarah Leverette that is deleted.

MR. STOUDEMIRE: Number 2 down here. The General Assembly already has this right, doesn't it? "The General Assembly may direct, by law, in what manner claims against the State may be established and adjusted." I don't see where that serves any useful purpose.

MR. WORKMAN: I think it does. Now, here again, comes the non-lawyer, but the theory of the immunity of the sovereignty from suit exists unless the sovereignty grants that power and here you've got the opportunity for them to come in and make some revisions.

MR. WEST: If we eliminate this we may be eliminating all legislative rights.

MISS LEVERETTE: I think the General Assembly could still do it. I think the sovereign immunity is there basically.

MR. WEST: Let's just leave this in.

MR. STOUDEMIRE: We want to transfer it somewhere though. To the finance section or the legislative section.

MR. WEST: Legislative Section.

MR. STOUDEMIRE: The only thing I have to say on divorces---you notice that the Constitution is very broad, "adultery, desertion" and so on. I don't really know whether the grounds for divorce really is a constitutional question. One angle about it is, if you start changing it, you might get people ---

MR. SMOAK: Also, this is one of those sensitive areas.

MR. WEST: Let's leave it as it is.

MR. WORKMAN: That's the type of thing that needs the piecemeal amendment if it needs amending at all.

MR. McLENDON: That's right.

MR. WALSH: You can allocate most any kind of misconduct to one of those grounds.

MR. STOUDEMIRE: One thing I like about it is the general terms rather than trying to define them.

MR. WEST: "No person who denies..."

MR. STOUDEMIRE: "...the existence of a Supreme Being shall hold any office under this Constitution."

MR. WEST: I'd say leave it in.

MR. SMOAK: Leave it in

MR. STOUDEMIRE: "The printing of the laws, journals, bills, legislative documents and papers for each branch of the General Assembly" and so on.

MR. WEST: Anybody see any reason for keeping it?

MR. WORKMAN: No, that grew out of the excessive corruption of public printing back during the Reconstruction days.

MR. STOUDEMIRE: No, "Removal of causes.--The General Assembly shall provide for the removal of all causes which may be pending when this Constitution goes into effect to Courts created by the same."

MR. WEST: That's not needed.

MR. STOUDEMIRE: "Lotteries.--No lottery shall be allowed, or be advertised by newspapers, or otherwise, or its tickets be sold... and the General Assembly shall provide by law at its next session for the enforcement of this provision."

MR. McLENDON: Better leave that in there.

MR. STOUDEMIRE: I have noticed, Mac, that several revisions have left the lottery statement as a constitutional thing. I can't tell you what Constitution, but some of the more modern revisions I have been looking at, they did not take it out.

MR. WALSH: That's wha you call a sensitive area.

MR. SMOAK: How does that thing read again?

MR. WORKMAN: "No lottery shall ever be allowed, or be advertised by newspapers, or otherwise, or its tickets be sold in this State; and the General Assembly shall provide by law at its next session for the enforcement of this provision."

MR. McLENDON: Take out the last phrase, couldn't you?

MR. WORKMAN: "...sold in this State" period

MR. STOUDEMIRE: Yes, they'd have to enforce it by law.

MR. WEST: Gentlemen, do you read Section 8?

MR. WORKMAN: Let's finish 7 first.

MR. STOUDEMIRE: You want to say that last sentence in 7? "No lottery shall ever be allowed, or be advertised by newspapers, or otherwise, or its tickets be sold in this State" period, you could say.

MR. WORKMAN: That gets into the---well, I guess our courts have got enough case law on what is and what isn't.

MR. STOUDEMIRE: All right, number 8. "Gambling and betting.--It shall be unlawful for any person holding an office of honor,..." all these things "upon conviction thereof" and so on. My feeling is that this really is not needed since we have broadened the Governor's power of removal.

MR. SMOAK: It's outmoded. I think that ought to go out.

MR. WORKMAN: Well, the rationale for taking it out is that these things which are spelled out as offenses here are offenses generally and should not be made---persons in office should not be singled out for particular treatment.

MR. SMOAK: Not only that, there are other provisions for a man who is convicted for certain criminal offenses, certain crimes.

MR. STOUDEMIRE: Why not say murder? Why pick out these little petty things? Now, the next Section, gentlemen, I'm going to let Sarah speak to because I had her to check on this thing for me a little bit. "Property of married women." If you go on the premise that a married woman should have some rights, then I think there is some discussion.

MISS LEVERETTE: On this particular one, that section citation is 20 instead of 21. Now, I don't know that it would make a great deal of difference to delete this from the Constitution because some statutes cover this except that it does not specifically say that all of this property that's related in the constitutional provision shall be her separate property. The only place that that is stated is incidentally in this section"that the real personal property of a married woman"and this parallels your Constitution up to a point "whether held by her at the time of her marriage or accrued to her thereafter, either by gift, grant, inheritance, devise or otherwise, shall not be subject to levy and sale for her husband's debts, but shall be her separate property". Now, that's the only place that it's specifically by statute states that it shall be her separate property. These others take in the right of contract and conveyance, these other statutory sections. The right to convey, bequeath and devise property and so on and you might say that it does pretty well cover everything, but there's no statement anywhere in the statute that specifically says that all of this is her separate property as clearly as it is stated in the Constitution.

MR. WORKMAN: Do you look on that as a necessary safeguard in the Constitution?

MISS LEVERETTE: I don't think there's any question about it these days.

MR. STOUDEMIRE: It might be a revision---in other words, in our comments if we took it out---

MISS LEVERETTE: Now, one thing, if it's removed and your statute does not cover everything, then you revert to your common law where she does not have any special property rights.

MR. STOUDEMIRE: So, what we agreed on, that if this is removed, then we have to have a notation that statute must immediately and forthwith take up all the situations, you see. Make sure that the statute does cover all.

MR. HARVEY: How about a statement under the Bill of Rights saying that women have the same rights as men.

MR. WALSH: Married women is what you're talking about. Single women have those rights, but under the common law a married woman forfeits those rights to the man.

MISS LEVERETTE: Now, your right of contract and these various other things are in here and so is this---by implication and you might argue that this last section in the statute here that says, "shall not be subject to levy and sale for her husband's debts, but shall be her separate property" might take care of it, but I don't know. There's a little doubt in my mind. It may be that it does and if the statute takes care of it, then I don't think it really has any place in the Constitution, but there is doubt there.

MR. STOUDEMIRE: I looked around at some other Constitutions and I can't find a similar statement.

MR. HARVEY: I move then that---whatever you say, Sarah.

MISS LEVERETTE: Well, except for that one. It's a question of interpretation.

MR. STOUDEMIRE: Could that interpretation be cleared by statute?

MR. HARVEY: Why don't we just adopt this Section 9 as a statute?

MISS LEVERETTE: It could be done by statute.

MR. WEST: Why don't we do that and put in the annotation that it's---

MR. WORKMAN: ---deleted in the Constitutional section with the assurance that all its provisions will be included in statute.

MR. STOUDEMIRE: Now, gentlemen, we come to a series of sections here. 10, 11, that cover a whole bunch of things and I think somewhere along the line we're going to have to decide how you do transfer from one to the other, but I don't know if this is quite the time, Mr. Chairman, to do it.

MR. WEST: That, again, is a mechanical sort of thing.

MR. SINKLER: You'll probably want to see what we've done before you---

MR. WEST: Let's pass over that.

MR. STOUDEMIRE: For instance, I could see where Spartanburg and York's urban renewal may even have to be taken care of in here. Now, you come over here to Section 12, page 6. This is a civil defense amendment, as you know. What happens in case of disasters where, really where other people can replace constitutional authority, you see and the only thing I can figure out is that this thing originated in the Department of Defense in Washington because a good many Constitutions have the same wording. What I was wondering though, is that the New Jersey, I believe,---now, the proposed New York Constitution says, to me, the same thing, but only in four lines. "Notwithstanding any other provision of this constitution, the legislature shall forthwith provide for the continuity of state and local public offices and governmental operations where such continuity may be jopardized in periods of emergency" and so on.

MR. WEST: I like that language, too.

MR. STOUDEMIRE: I suppose, John, that it is a Constitutional issue, isn't it?

MR. WEST: Yes.

MR. STOUDEMIRE: There would be grave doubts about substitution without a constitutional provision, I think.

MR. WORKMAN: This caused a good bit of discussion in '61 on this continuity of government. The wiping out of a city or a capitol by an atomic bomb. All members of the General Assembly were supposed to name alternates.

MR. STOUDEMIRE: Well, are you willing to adopt the shorter language or you want to keep as it is?

MR. WORKMAN: I would suggest that that be checked with the Adjutant General who is now the number one man on the State level for civil defense. Most all civil defense functions now are funneled through

him as the chief military man of the State. This is apart from the Civil Defense office. The Adjutant General is the number one man in civil defense below the Governor and it might be worth checking with him to see if there is a reason for keeping this language.

MR. STOUDEMIRE: We all agree that the thought must stay, whether it's the longer or the shorter. Now, gentlemen, over here we come to two things that I think I'm about the only person in South Carolina that knows that they exist. "The General Assembly shall provide by law for the condemnation through proper official channels, of all lands necessary for the proper drainage of the swamp and low lands of this State, and shall also provide for the equitable assessment of all lands so drained, for the purpose of paying the expenses of such condemnation and drainage." I'm still not quite sure as to why this was enacted. (Reference is to the Articles of Amendments)

MR. SINKLER: I'll tell you why it was enacted. Because of the provision of Section 1 of Article X which said that all taxes shall be uniform and what they wanted to do in Cow Castle Drainage District in Orangeburg County and Catfish Drainage District in Dillon County is to provide that the land only shall be assessed. It has been used and actually it's still being used in some of these federal projects coming along, but I don't think we need it now under our provisions that we have put in our Debt section and our Local Government section.

MISS LEVERETTE: This was cited as recently as 1959.

MR. STOUDEMIRE: Huger, we've got all types of special districts now and if you define a drainage district as a special district, you could do this anyway, couldn't you?

MR. SINKLER: The theory is in special drainage districts you levy a tax which is an assessment. This provides for tax on the land itself and out of this evolves the last faithful acre doctrine.

MR. STOUDEMIRE: Both of these amendments were adopted the same year.

MR. WEST: Does everybody agree to delete?

MR. SINKLER: I think so. It doesn't serve any useful purpose.

MR. STOUDEMIRE: That's it. There are a whole lot of other things that we need to consider.

MR. WALSH: There are a lot of other things that we need to consider that really are going to come up as a result of some of the changes we've made.

MR. STOUDEMIRE; Mr. Chairman, I do have an insert to give to the members. Whether or not they want to discuss it today or whether we take it up on our "hangover" list. For instance, I finally have a proposed search warrant provision which I prepared and submitted to Dan. Whether or not we agree with the Attorney General is another thing. Also, attached to this is a proposed administrative procedure provision and this has been worked out with some little commentary so these are ready whenever you say.

MR. WEST: How much more have we got to do?

MR. STOUDEMIRE: An urban renewal decision. It now says, "eminent domain" and the statement is still like the court described it, that you cannot without constitutional permission. So that is a question. The search warrant. Whether or not we want a provision on administrative procedure. The constitutional officers and I believe those are the major things.

MR. WALSH: There is one further that we said that we were going to carry forward on Local Government, and that is on the question of taxation between local governmental units and the special services.

MR. SINKLER: I thought we adopted that after you left the other day.

MR. STOUDEMIRE: We picked up a statement from our original debt statement. Emmet, if you would read that again. It's included as part of the section on debt. The working paper.

MR. WORKMAN: You incorporated that in the working paper.

MR. STOUDEMIRE: If that does not suit what you had in mind, that is on the agenda also. I think that's about it.

MR. WEST: Are you in favor of ploughing ahead, at least on matters that we are in substantial agreement on.

MR. WALSH: I think that, really, we're at the point that as soon as we can get a real rough draft of everything we've decided on---I have the feeling that once you read one section against the other, we might all of us have questions to bring up as to further revisions.

MR. WEST: Let's go ahead.

MR. STOUDEMIRE: All right. Statement on Declaration of Rights. The hangovers on that. Gentlemen, to refresh your memory and I have checked the minutes out very thoroughly here. You remember there was agreement among the group that we needed some statement on protecting the privacy of people from State action and you remember we modeled

it on the Maryland thing and we got bogged down in the manner of activating the thing. In other words, how do you describe what is to be intercepted and so on. So the way this thing now is, that the first section up here is not a thing, but an exact repetition of the long-time search and seizure statement within the Constitution. Then, B is a brand new thought on it, "the right of the people to be secure from unreasonable invasions of privacy shall not be violated" and I have discussed and sent this over to Dan on the grounds that let the Constitution establish this as a principle and let the courts take over the refereeing of whether it's enforced properly. Now, this next section is one suggested by McLeod himself. Coming up from this new law case whereby an inspector going out for wiring and so forth, and he thinks that this is needed. "That warrants issued in the execution of laws relating to the general health, safety and welfare shall be issued upon such cause as the General Assembly shall by law determine". He thinks this is needed to---in order to make sure that these things can be done and so on. He wrote a letter on this a long, long time ago.

MR. WEST: Frankly, this sounds pretty good.

MR. WALSH: Looks pretty good.

MR. SMOAK: Looks real good. Could you elaborate a little bit on Section C.

MR. HARVEY: You're not suggesting these as alternates. You're suggesting all three of them.

MR. WORKMAN: Yes.

MR. STOUDEMIRE: "The Supreme Court has stated that knowledge of probable cause is not _____ to a valid search. In short, that an inspecting official need not have grounds to believe that violation of a health, zoning or fire code exists in order to procure a warrant. There is not present authority for the issuance of such warrant, but this can be easily remedied by a statutory enactment, he says. Constitutional provision, however, has been framed to meet the tests of probable cause in criminal cases only"is his argument. "If officials authorized to issue search warrants may issue warrants only on showing of probable cause,the effect of this can be to nullify the effectiveness of routine inspections of the type referred to" is the point he's making.

MR. WORKMAN: This grows out of public housing projects.

MR. STOUDEMIRE: Well, you can go without probable cause and I think what he's saying here is that this would give the General Assembly the right, constitutionally, to issue some of these inspectional warrants, you see.

MR. SMOAK: Should provide---to,state that probable cause is required.

MR. WORKMAN: They don't want that.

MR. WEST: Let's say that you have a series of apartments and you have a routine gas inspection for heaters and so on and one apartment owner refuses to let his apartment be inspected, then---

MR. STOUDEMIRE: He has another sentence here which I think is clearer. "It would appear desirable to provide language which would provide for the issuance of search warrants in instances where the purpose of a search warrant is not in aid of the enforcement of criminal statutes." I think it will tell you it is a criminal thing at the first part and some of these other warrants are not necessarily criminal. Is that right?

MR. SMOAK: That's right.

MR. STOUDEMIRE: So, I think what he's saying is to be sure that the General Assembly can authorize the issuance of a warrant to inspect my wiring and so on, that we better have a constitutional base for it because it is not linked,necessarily, to a crime.

MR. WEST: In other words, if there's a leaking gas circuit somewhere in a complex of apartments and one owner says he's not going to let you come in and inspect, the hands of the inspector may be tied right now.

MR. STOUDEMIRE: And the leak is the fault of the utility and not me. Now, if I deliberately had a faulty wiring, that might be criminal because it may be a city ordinance, you see. I think that's what he's getting at.

MR. WALSH: For instance, this fellow lived upstairs and they wanted to inspect it to see if his apartment conformed to the fire regulations. He said, "no, that's my home and I'm not going to let you in". He was convicted of a misdemeanor for failing to let the inspector in and they reversed it, saying he didn't have to. You've got to have a warrant.

MR. HARVEY: And a warrant can be issued on probable cause.

MR. WALSH: That's why you need this additional thing. You wouldn't necessarily have to have probable cause, but you'd have to have reason to believe that this particular search will aid in health, fire protection.

MR. SMOAK: The General Assembly might require probable cause. I think this is a good thing.

MR. WEST: All right. Any objection to this section? If not, we'll consider it included. Now, on the Administrative Procedure---

MR. STOUDEMIRE: John, this thing is still wide open. It's based still on the Kentucky thing. Now Professor Abernathy talked to Professor Rosenblum. Abernathy says he is the best authority he knows on this. And Rosenblum sort of feels that Section A is o.k., but that the latter part---the bottom of the page down here where Kentucky made this thing all-inclusive, Rosenblum says that you would get yourself in court and never get out and, in effect, if you're going to have an Administrative Procedure thing you need it bound by quasi-judicial decisions as opposed to such things administrative decisions, Abernathy says, on school calendars, textbooks, and other things.

MR. WORKMAN: Doesn't that impose a burden of litigation and expense on an individual who might be treated right arbitrarily by an administrative agency?

MR. SINKLER: You give him a redress.

MR. STOUDEMIRE: Gentlemen, the history of this thing, to the best of my knowledge, about six years ago, Professor Rankin of Duke University did a thing for the National Municipal League on the Declaration of Rights and he brings up that perhaps now in our great bureaucratic government that administrators in many cases might have more to do with interference of one's rights than anybody else and so this is where this thing really got into the national lime-light.

MISS LEVERETTE: You know, this strikes me as being, to some extent, similar to the situation we talked about with our magistrates. A lot of people who might be subjected to things that were not---did not recognize their rights at this stage, at this administrative level, might never go any further. They may never get any further than that. This, to me, is getting to be---will get even more so later on as our administrative agencies continue to grow.

MR. WORKMAN: I think this is a very desirable check rein on administrative agencies becasue those of us who are here, either by virtue of our position or our connection, or standing in court representing somebody, are going to find that these things won't be raised to confront us, but the poor devil that doesn't know anybody or doesn't know anything, he's going to be treated right arbitrarily and denied certain rights and also an opportunity to be heard unless we kind of put these administrative agencies on notice that you have got to pay attention to them, go to give them a hearing.

MR. WEST: I agree with you, Bill. I think that there ought to be a provision giving the automatic right to go into court where any substantial determination involving a person's rights---I think we, by practice, have it, Huger, but I'd like to see it spelled out.

MR. SINKLER: I have no objection to it. I think---take the National Labor Relations Board, what it can do and what it can't do.

MR. WALSH: What we're saying here---they have that right to go in court. What we are saying is, if an administrative agency is acting in a quasi-judicial capacity, then they have got to give that fellow notice of a hearing and they have got to give him an opportunity to be heard. That they can't just up and revoke a fellow's license to drive a car without a reasonable opportunity to be heard. Now, under our general law, under common law, we have a right to certiorari if they exercise it in arbitrary fashion.

MR. SINKLER: You've got a right of certiorari period. All you're doing is preserve your certiorari.

MR. WEST: Is that right of certiorari absolute?

MR. WALSH: No, no.

MR. SINKLER: Of course, certiorari in its very nature is discretionary. The way our court has applied it has been, basically, to provide that certiorari---where there's no remedy at law, they provided the right of certiorari, but I think it's a very good thing to put in the Constitution.

MISS LEVERETTE: I tell you something else that appeals to me in there is giving the General Assembly the right to go ahead and provide for if they want to, some procedure if eventually they wanted to. I assume we have sort of a wide variation as far as procedure is concerned.

MR. STOUDEMIRE: As I understand here, Professor Abernathy's only recommended Section A and then all the mechanics of this thing would be done by law and that Rosenblum says that if you adopt all this other stuff that Kentucky has, "would stand as an open invitation to seek judicial review of unfavorable administrative decisions" would be too much.

MR. WALSH: I move we approve Section A.

MR. WEST: Is that agreeable to everybody? O,K.

MR. STOUDEMIRE: The next thing would be what are you going to do with the Secretary of State and the Treasurer? You remember, I think I've got it correct, that the Attorney General is still elected. The Supertendent of Education transferred to the Board. Comptroller General transferred to the Legislature and then that the State Treasurer and Secretary of State would be selected by the Governor, was that not right?

MR. WORKMAN: With confirmation, I believe, by both Houses. The General Assembly. The Adjutant General also was to be appointed and, as I recall, we had his confirmation simply by the Senate, didn't we, but I believe that was before we got into the discussion of the other although there didn't seem to be any real feeling as to having him by the General Assembly. On the other, there seemed to a greater rationale for the Secretary of State and the Treasurer because of their involvement with both Houses.

MR. HARVEY: What did we do with the Attorney General?

MR. WORKMAN: Elected. On the theory that he is a policy maker and is more identified with the general public.

MR. WEST: The argument advanced by the Secretary of State and the Treasurer was that, I think, only six states have a non-public election. They are just bitterly opposed to any change.

MR. STOUDEMIRE: Of course, to counter that argument and I'm not speaking for or against, really, is that not too many states have really had a recent revision of the Constitution. In other words, these are long-time state positions, you see, and were established as constitutional things way back. What all this rash of constitutional revision now will do, I don't know.

MR. HARVEY: What was recommended in some of these?

MR. WORKMAN: A lot of them aren't even mentioned in the Constitution.

MR. STOUDEMIRE: In New York, the Attorney General is about---I think he might be elected. The Secretary of State I know up there is the same thing as the Postmaster General of the United States.

MR. SMOAK: I move we leave it the way it is.

MR. WEST: Let me just say this. The Secretary of State is most bitterly opposed. My thinking is this that we can't compromise on matters of principle or important things, but really, I don't believe it makes that much difference.

MR. SINKLER: I voted to leave it the way it was myself and didn't understand we had really---just a tentative change. Of course, what I think all of us are trying to do is to preserve the continuity of those offices, particularly Secretary of State. We're probably going to get to the stage where we have slates run for Governor and I think offices like that are not going to be considered too much by the voters. They're probably just going to vote for the head of the ticket.

MR. STOUDEMIRE: Your State Treasurer does have a bearing into an overall financial set-up that you might want to some day change. I don't know. I'd given a little thought to a compromise idea. Something to the effect, still recognizing the two offices as a constitutional position, but leaving the matter of selection up to the General Assembly.

MR. SMOAK: Well, it seems to me, in keeping with what we're trying to do in the whole Constitution, with what we're trying to do in the Governor's office, in keeping with the present movement in the counties to update the county government and everything, I just don't see any point in changing it. In changing the decision we made.

MISS LEVERETTE: Let me ask one question, Bob. I don't have any particular feeling one way or the other. What have we done in the way of strengthening the Executive?

MR. STOUDEMIRE: Not too much, really, except letting him run again. Secondly, we've got a provision giving him more power to enforce--- administrative things now and to inquire and to get information and power to demand it and also he can bring a case to see that the law is enforced.

MR. WORKMAN: Both power and responsibility.

MR. SINKLER: You're strengthening the executive's hand if you--- instead of just what you end up with the way we've got it now, is the Governor, the Lieutenant Governor, the Attorney General would be the slate. You add to that slate the Secretary of State and the Treasurer so presumably you would require a five man team instead of a three man team.

MR. WALSH: What I would like to see us do is go ahead and put this Constitution together. I can't recall some of the decisions that we made with regard to how we've strengthened the Executive. I do feel that one of the greatest weaknesses of our present Constitution is that the Governor, the real leader of the State from the Executive standpoint doesn't have enough---

MISS LEVERETTE: I don't think we've done a great deal to strengthen it.

MR. WALSH: Therefore, if we haven't done much, there's no use to get in a fight over nothing.

MR. STOUDEMIRE: You see, now what we have done---we have not strengthened too much except for just the few things just mentioned, but as it stands now, you have taken the Secretary of State, you have taken the Treasurer, you have taken the Adjutant General. You've left the

Attorney General and you have left the Governor one-third control over the Superintendent of Education because he appoints one-third of the board. As it stands now, this will leave the General Assembly of South Carolina, whenever it sees fit, to come back by law and make the Governor, really, a very powerful being if they want to because all they have to do is say that the Governor can appoint the Highway Commission and so forth and on down the line.

MR. WORKMAN: Those are things that don't show in the Constitution.

MR. STOUDEMIRE: Yes. The way it stands now, you do leave the way open for the Legislature to make a strong Executive. We have not in the Constitution.

MR. SINKLER: I think it's Twiddledum and Tweedledee with these particular offices. I voted for them to run.

MR. WALSH: They're going on the premise that they are elected now and they'll never have any opposition as long as they live.

MR. WORKMAN: Well, neither one of them are willing to accept (I don't think they question our motives), but they are unwilling to accept our judgement that they are in better position under what we propose than under what they now have. I think as a matter of enlightened procedure in trying to streamline and modernize State government that the arrangement that we have made is desirable and I'm not going to make any impassioned speech or plea, but I want to continue to vote the way we voted on the first go around with the possible exception of perhaps, for consistency's sake, making the confirmation of the Adjutant General the same as for the Treasurer and the Secretary of State. I have no feeling one way or the other on that. Either the Senate or the General Assembly. My motion would be to retain the arrangement of executive officers, of administrative constitutional officers as we decided on our first discussion.

MR. WEST: I think, frankly, if we're going to have a close thing, we ought to have a fairly full---I know the Speaker feels rather strongly.

MR. SINKLER: I think it's really so unimportant. Of course, I was on the other side.

MR. WEST: I don't think I voted. I think that was the day I had to leave.

MR. SINKLER: I wasn't strong on it one way or the other.

MISS LEVERETTE: If this thing is geared to the thought of strengthening the Executive, I would prefer to let this stay as it is and strengthen him somewhere else where it may be more important. I think there are some areas where we might have given more power to the Governor where we haven't done it.

MR. SINKLER: I think we may have a built in row where we ask the Governor to appoint and the Governor appoints and the General Assembly rejects his appointment. You've got a lame duck situation and I think that could cause more harm than the other way around. Where it's only the Senate, I think the Senate would act. When you get down to a vote of the entire General Assembly, I think you could have a situation. So, in the final analysis, you are probably going to have to give the Governor a little bit more power.

MR. STOUDEMIRE: Let me ask a question. I've never thought of it and I've never checked it out and it might be worth doing because it may be part of the answer. The Constitution says there shall be a State Treasurer elected. That's all. Four year term. Can the General Assembly specify qualifications of a Treasurer?

MR. SINKLER: I don't think so.

MR. HARVEY: I move we adjourn debate on it. I think you're right. I think it's fairly close. I'm with you, John.

MISS LEVERETTE: I think the Governor should have more power.

MR. WEST: Let me say something here. I have always felt that the Governor should have more power, but I've watched some of our recent Governors and I don't believe they have lacked power too much. In other words, I don't know where I would have changed it. They had enough power to do the job right well. What I'm saying that a Governor who has the necessary qualifications of leadership, under our present system can be right effective.

MISS LEVERETTE: That has been proven.

MR. WEST: That has been proven and I doubt that giving him additional constitutional or statutory powers would---I'll put it this way, a good governor, a man with leadership ability, doesn't need any more powers. If you had a Governor who didn't have the leadership ability and gave him the powers, the State might be in a pretty bad way.

MR. HARVEY: I think wherein he is weak in administrative are these commissions, possibly, which run various administrative branches or divisions, that's statutory and not constitutional.

MR. WEST: Right.

MR. WALSH: We've got a system, the people can't bring their will to bear no matter what they would like to do because it's so cumbersome, divided up into so many little areas that the people just can't ever bring their will to bear.

MISS LEVERETTE: I would just like to see where we stand. I'm not pushing anything.

MR. WEST: I really feel that probably we are in pretty good shape especially with the changes about saying as to the enforcement of the law. I think that provision is of tremendous importance.

MR. WORKMAN: Let me read something which goes to a question which Emmet raised about stipulating qualifications under the right of suffrage. "Every qualified elector shall be eligible to any office to be voted for unless disqualified by age". Even the judges are not required to be lawyers.

MR. STOUDEMIRE: Mr. Chairman, I don't think we can decide it today, but quite frankly, on this business of urban renewal, I really don't know how to proceed. You see, we adopted the basic statement that the government can only take private property for public use. This is the old, long-standing statement and our agreement was that this still ought to be in the basic premise. And that we would get around to discussing this urban renewal bit when we got down to municipal and local government. So, now here we are with two counties having it and the voters defeating it for five. I don't think the two counties want to surrender what they have, so I don't know what approach to even use to try to develop something.

MR. WALSH: I'll be frank with you. I think we're going to have to re-examine these questions in light of what we put in local government. The statement on condemnation is now far out-dated. You won't find that statement in your new constitutions. It takes into effect these changed conditions to a certain extent. It guarantees just compensation. New York says, "just and timely compensation" and, frankly, I'm not so sure if that isn't a good thought to put in. Now, under a number of our condemnation statutes, you can take a person's property and they might not get a penny for five years. It can be laid up in a court not drawing interest. Those are things that perhaps need a little additional thought and a little bit more study on.

MR. WORKMAN: Justice delayed is justice denied or payment delayed is payment denied.

MR. WALSH: I've seen that done. The rationale of most states is that where you have a bad slum condition, that that is a public purpose. They didn't arrive at that by any amendment to the Constitution.

MR. SINKLER: I think that it's such a contested thing that it ought to be covered in the Local Government.

MR. WORKMAN: The local option feature.

MR. SINKLER: And provide that any existing amendment would be continued effective.

MR. STOUDEMIRE: Is it safe constitutional theory to say that a right as important as this can be surrendered by the State to a locality without a Statewide policy is what worries me.

MR. SINKLER: After Spartanburg and Rock Hill got theirs through, you're going to see the rest of the State really paying a little attention to it and more or less letting it go on a local basis so that I think---an approach to the situation that I suggest that you finalize by letting it be in the local government provision and wording Section (whatever it is now) for public use---

MR. WEST: "Except as otherwise provided".

MR. STOUDEMIRE: You see, New Jersey gives you a fairly good language by an amendment which they had to adopt and the amendment itself goes on---the amendment deals with a definition somewhat. In other words, you have to sort of justify that there be slum conditions and that there be certain other things.

MR. WALSH: You can't simply go out and say, "this is slums" and it is slum. You've got to have public hearings. As it is applied, even if it's in a slum area and the house is good, the application of federal standards, they just won't let you take it down.

MR. STOUDEMIRE: John, is the feeling of the group that if this thing is, really, just approached from a statewide standpoint, that urban renewal can be defined as a public purpose, that this would get you a lot of negative votes. Kill the Constitution aborning.

MR. WORKMAN: It could have a very detrimental effect because a lot of people brought this argument up in Charleston with respect to Spartanburg. "What about those of us who live here, but own property there. We are sacrificing our property to the desires of the Spartanburg people for urban renewal."

MR. STOUDEMIRE: I have about come around to what Huger suggested, really. I think the facts of life are that urban renewal, somehow or other, is going to come about and maybe a constitutional provision that local option of some type or other---

MR. SINKLER: I think that's the way to do it.

MR. WORKMAN: Well, it's an undesirable approach to it on so fundamental a thing as eminent domain. If we could get another suit before the court we might come out with a completely different ruling on it.

MR. SINKLER: I don't believe you would.

MISS LEVERETTE: I've heard a lot of discussion on it and there's a lot of opposition to it apparently.

MR. SINKLER: Actually, the opposition is growing because of the fact that I don't think urban renewal has had the success that a lot of people thought it would have. I think urban renewal is a lot less popular today than it was, perhaps, some time ago.

MR. STOUDEMIRE: Mr. Chairman, should I try to work on local option?

MR. WEST: Is it agreeable that we try to get a local option draft for inclusion?

MR. SMOAK: I think that's the only approach we can take.

MR. WEST: Are we at the stage now where the job is up to you.

MR. STOUDEMIRE: Well, I've got the Bill of Rights about done and that is as far as I have gotten. It's going to take me a little time to do these things, really.

MR. SINKLER: I would like to meet again. The Treasurer and the Secretary of State which I hoped to resolve today---I'd like to try to get those out of the way before we get into real revision. Those are not serious, fundamental questions, really. Then I think we ought to take up the proposition of submission of this document fairly soon because the Legislature's time is rolling on.

MR. WEST: We have shifted the burden to Bob to come up with a draft. We've still got a couple of little things. One thing we don't have to wait on. That's the strategy. Whether we're going to make a recommendation as to methods or whether we are simply going to outline the alternatives and leave it to the General Assembly.

MR. WORKMAN: We've got to make that independently of the content.

MR. STOUDEMIRE: You all know of a lot of these little minor changes that we've made, but as just a simple review, the Declaration of Rights. Major changes proposed, there may only be three. In about two pages, the major changes that you people have adopted, I think could be summarized if this would have any bearing on what your decision may be.

MR. WEST: I think at some stage we are going to have to have those notes.

MR. WALSH: I would suggest that he proceed and as he gets as many as two sections, mail them out and then let the Chairman sort of bide his time and if we've accumulated enough things to discuss, then try to get together some afternoon.

MR. STOUDEMIRE: John, what I had planned to do, really, with Bill's and Sarah's agreement, that when I got a section done, then we would have a short pow-wow, primarily from the standpoint of their confirming that I did carry out the decisions as they recall them and as the minutes show.

MR. WEST: We agreed on that last time. In other words, we'll constitute them an informal executive committee to assist you and to give a thorough scanning to the draft to make sure it's generally in accordance with their recollection.

MISS LEVERETTE: I think we could save the Committee some time if, as Bob said, he could run up this little rough draft of just the major changes in just a short time---if he could do that and we could have that and kind of get an overall picture of the major things, it would save a lot of time.

MR. WALSH: Just type up a draft without any notes just for us to look over.

MR. STOUDEMIRE: You see, what I'm doing now, I'm going down one side of the paper and I'm putting Article I, Section 1, double spaced. On the other side, comment, single space, you see. So, if you want to read through the whole document as it now stands without getting caught up in comment, all you've got to do is fold the paper back and read straight through.

MR. WORKMAN: Well, where we are right now, we have had our colloquy back and forth and it comes down to disagreements, all the Chairman need do now is put it to a vote on virtually everything that we've covered. We do need discussion as to what we propose to do this session in terms of altering the amending process and/or submitting those substantive amendments that we think ought to be adopted like debt limitation, that should be adopted regardless of what happens to a new Constitution so I think, Huger, we're back where we were on the first go around with that respect that we want to decide what we're going to do as a Committee, but we also want to get the Legislature to do something about amending those sections of the Constitution which badly need it now whether this Committee existed or not in terms of debt limitations.

MR. WEST: Right. Here's what I want to suggest. Let's have a meeting on the afternoon of February 6th. Bill, if you and Bob could work up an agenda--I think first of all we want to dispose of this political thing of the elected officials. Secondly, I think any other hangover or carry-over items---can you have by then the research on what other states have done with respect to amendments.

MR. SINKLER: Aren't we really confined to two or perhaps three alternatives at most which could be clearly phrased and put on the agenda and let's vote on them. I think all of us would like to see the document as we write it submitted, therefore, there are only two methods of doing that. One is by the Convention and the other is by the amendment of the existing 16. Couldn't we take a vote on that? Our recommendation or whether we're going to tell the General Assembly they've got these alternatives.

MR. WEST: I'm inclined to think that we ought to present a fairly detailed summary of the advantages and disadvantages of both systems with a recommendation, but not make our recommendation the focal point of it. In other words, say this is a matter for legislative determination and I suspect it will be a divided question, but I don't want to build a credibility gap of our Committee by saying that we all agree to a Convention and I think, perhaps, a majority of the General Assembly will say that's a way out solution, but I do think that we ought to go into it thoroughly. I'm open-minded on it right now, frankly.

MR. STOUDEMIRE: John, back to your question about the various procedures and methods and so on. We can do that essentially, but leaving the exact figures to hang fire.

MISS LEVERETTE: It has to be, necessarily, confined to just a few states.

MR. STOUDEMIRE: We'd have to wait for correspondence to be answered before we could tell you that the Maryland Convention cost a million dollars or two hundred thousand.

MR. WALSH: Is it not possible just to have someone type up what we have decided on so that each could have a copy of it to think over?

MR. SINKLER: That is what he's going to do. That's going to take him some time. I don't want to see parts of this thing come out which we may not have agreed to.

MR. WEST: We have already announced that everything is tentative. We're going to have a public hearing. For example, the Farm Bureau has a great feeling about the taxation, property should be taxed not on the basis of its use. I do not recall whether we have dealt with that and what we did about it.

MR. STOUDEMIRE: I think, in essence, taxed at full value and all treated alike.

MR. WORKMAN: There was a big fat question mark there to try to achieve some equity in the use of the land to which it is now being put.

MR. WEST: Of course, the Farm Bureau has that as one of their two major legislative points and they have a very persuasive case.

MR. HARVEY: I don't agree with them.

MR. WEST: The point is that they will want to be heard on that section. Let's try to get our preliminary work done at one more meeting on the 6th of February. At 2:30.

MISS LEVERETTE: Now, John, on this other thing, you will key this to what these other states have done to Bob's draft.

MR. WEST: What I think we ought to do if we have time, is get into--at least a little way into what our recommendation is going to be, if any, on the method. For example, here's what concerns me. If we are going to recommend that you try a one shot revision, we ought to determine whether or not we are going to try to get the Resolution through to submit that question in the 1968 general election and if so, we ought to make that decision and we can't wait too long to start it.

There being no further business, the meeting adjourned at 6:15 p.m.

W. D. Workman, Jr.
Secretary

Nettie L. Bryan
Recording Secretary

MINUTES OF COMMITTEE MEETING

The Committee to Make a Study of the Constitution of South Carolina, 1895, met in the Wallace Room at the State Board of Health, Columbia, South Carolina on Tuesday, February 6, 1968 at 2:30 p.m.

The following members were present:

Senators-

Richard W. Riley
John C. Lindsay
John C. West, Lieutenant Governor

Representatives-

J. Malcolm McLendon

Governor's Appointees-

Sarah Leverette
T. Emmet Walsh
Huger Sinkler
W. D. Workman, Jr.

Staff Consultant-

Robert H. Stoudemire

MR. WEST: The meeting will come to order.

MR. McLENDON: Mr. Chairman, these Tuesday afternoon meetings are pretty bad. Brantley couldn't come. Sol says he can't make it. I know you realize our problems down there on Tuesday.

MR. STOUDEMIRE: Mr. Chairman, we have some left over things if you want to start. Some we can handle today. Some I have on here we can't handle today. One thing that is pending is whether or not we make a statement on urban renewal and I summarize here the Georgia position in its Constitution and the New Jersey position which are, apparently in both states, it appears as if their court ruled similar to our's, that public purpose did not include and you see, in both approaches, it throws it right into the lap of the General Assembly after establishing that urban renewal is a public purpose, the General Assembly shall provide by law in both cases how it will be carried out. As a Constitution, we kept the old section on eminent domain and so on and where we are now, we have the old rule that you can only take for a governmental purpose which would not include this. We have Spartanburg and York with Constitutional exceptions. So the question is, do we want such a statement? Do we or don't we?

MR. WEST: What is the will of the Committee?

MR. WORKMAN: Let me inject one thought without getting to the substance of the yea or nay, but as to the content of this thing here. In some of this urban renewal stuff, a necessary ingredient for the sale of condemned property to subsequent private use, is that such sale and/or use conform with a plan approved by the governing board of the area concerned which means that you can't simply dispose of a piece of property for a guy to put a filling station or anything else there unless the use to which it's put conforms to a plan provided by the governing body.

MISS LEVERETTE: That hits at the point that I heard objection on here is that if you have this in the Constitution, there is no condition or control on the actual implementation of it once it's put into effect.

MR. WALSH: Except that the General Assembly can put those conditions. For instance, the enabling act for Spartanburg says that you have to have a general plan. It further says that any sale has to be in conformance with that plan and it says that you've got to take the highest bidder---it says you can take the lowest. You're not required to take the highest bidder provided these other elements such as total taxation and all those are found to be in the best interests of the municipality.

MISS LEVERETTE: You would assume that there would be controls put on. I just mentioned that from the standpoint of some of the objections that I had heard.

MR. WALSH: Nearly every enabling act I've ever seen has that sort of thing.

MR. WORKMAN: If we move in the direction of including something of this sort, we might give some thought to increasing the palatability of it in the Constitution because there's still pretty strong feeling around the State on that.

MR. SINKLER: Why don't we put a provision in it, "provided that the local vote is favorable". In other words, don't just let the General Assembly haul off and say Charleston can do it and not make Charleston vote specifically on it.

MR. WALSH: It's kind of like bonds. When you have to issue bonds, I think you could actually have---

MR. SINKLER: I would be in favor of this myself. I'm trying to give you the pin-point from Charleston because I'm in favor of urban renewal properly undertaken.

MR. WALSH: So long as we don't have to make it retroactive. We voted twice for it and we have it now and we want to keep it.

MR. McLENDON: Did you do it by Constitutional amendment? What was the language?

MR. WALSH: Almost identical with Georgia. Our enabling legislation is the suggested standard.

MR. STOUDEMIRE: Of course, I see a lot of possibilities. You do it simply, in transferring your schedule, take care of York County and Spartanburg. You simply say, "That urban renewal programs in existence at the adoption of this new Constitution---". Then you can let everybody else who wanted go the amendment route. Or you could use this approach here which really puts the burden in the hands of the General Assembly and I would assume that if they had this, you could use a population class law in order to take care of certain areas and exclude other areas, you see. Or, theoretically, you could do it on the basis of the General Assembly shall define the details,as Huger suggested, as to a local referendum and so on. These are all your possibilities.

MISS LEVERETTE: As it stands now, I see nothing wrong with this. I think the only problem is trying to do something, as Bill says, to make it more palatable.

MR. WORKMAN: Well, a factor that Huger touched on and so did Bob, is that there is no way in either of these, no provision for a referendum.

MR. SINKLER: I think probably our existing statute---if we adopted this, we've got a statute on urban renewal now. The court just knocked out the condemnation section.

MR. WALSH: One section on re-sale.

MR. SINKLER: So that you'd probably, if you put this in the Constitution, you'd probably have a statute, probably have the thing all ready to go which would suit me fine, but there is so much opposition to the thing that it seems to me---I'm taking a view that I don't believe in personally. The practical politics---not make it effective until there has been a local vote. I think that is really legislation rather than Constitutional.

MR. WORKMAN: Yes, because if the referendum is put in, all this sort of stuff is going to be added anyhow, you're going to have to have a plan to make it effective.

MR. SINKLER: I think you have to take care of York and Spartanburg by a simple sentence. I assume you can say "that no further action shall be required in instances where urban renewal is now in effect".

MR. WALSH: I'm just wondering if we couldn't recommend this and then say, to be sure that these two counties that have already voted for it and have it, that that program continues if this provision be inserted.

MR. SINKLER: I think we ought to put that the program continues in this thing. Somewhere in this Section here.

MR. STOUDEMIRE: I would do it in the schedule. Where you take care of all things that are necessary to criss-cross from one to the other if you are going to do it at all.

MR. SINKLER: Just to bring the thing to a head, I move that we adopt the Georgia with the proviso that the subsequent legislation not take effect without a local referendum.

MR. McLENDON: Is that necessary? Isn't that going to be an unnecessary burden, a hard burden, where it's actually needed?

MR. SINKLER: I'll go the whole hog if you want.

MR. WALSH: Why don't we recommend this? If the climate is such that you need to add the referendum, that's certainly a point to which we could all say, "fine". Let's think of the fact as it develops in the General Assembly, certain concessions may have to be made.

MR. STOUDEMIRE: The only comment I would make---in my recollection of South Carolina Supreme Court decisions is that they have been fairly liberal in upholding a population class law that really fits only a shoe. In other words, I really think that you could do this thing, make it apply to Greenwood and Aiken, let's say, without getting involved with Charleston or Greenville and the Court, I believe would uphold it,based on a lot of their past decisions.

MR. WORKMAN: Where exists a reasonable cause for distinction.

MR. STOUDEMIRE: We have all types of laws. Municipality, five to ten thousand. Over twenty thousand and on and on.

MR. WORKMAN: Let's try to settle whether or not we should put into the proposed language, if we lean on the Georgia thing, "may undertake and carry out, subject to approval in a referendum". Whether words of that nature should be put into this or not.

MR. WEST: All right, let's start back from the basic step. Are we going to put some form of urban renewal permissive provision in the Constitution? Is it generally conceded that it should be? The next question is, do we wish to put the restriction of having it approved by a referendum? Shall you specify an area? Is it the city or does it have to be in the county?

MR. SINKLER: I think the referendum would have to be co-extensive with the area.

MR. McLENDON: If you buy that sort of arrangement, suppose the City of Columbia wanted to turn Black Bottom into an urban renewal area, then the City of Columbia would vote on that sort of proposition.

MR. WORKMAN: Unless it spilled over into housing in the county and then it would be a countywide proposition.

MR. STOUDEMIRE: Well, this way you're going to have to say, "a referendum conducted by the governing body in which the land is located" aren't you?

MR. WEST: Right.

MR. SINKLER: In which the plan is to become effective.

MR. WEST: A referendum conducted by the governmental unit to include the area to be affected.

MR. WORKMAN: You have got the language that refers initially to any city or town or any housing authority or any county. You've got those categories to start with.

MR. SINKLER: Before you get too far in that, it just occurred to me that it is possible with the way things are going--I don't know whether we want to consider this or not, but this language of the New Jersey Constitution says, "that private corporations shall be authorized by law to undertake these projects". There probably is going to be a good deal of this done by the major insurance institutions in the United States.

MR. WALSH: And by some incorporations.

MR. SINKLER: New Jersey, for instance, has got in mind that New York Life or Equitable or some of those people could do it. This is sort of an aside, but a banker was telling me about a construction loan they were making for negro housing done by a private concern and this representative of a very large insurance company came down and said the government had more or less allotted them to take 500 million dollars of this particular financing during the present year because they're going to be FHA insured so the pressure is on those people to do that sort of thing. With the government getting poorer,

you may well see that the government does not sponsor urban renewal the way they're doing today, Five years from now, you might see that the only undertakings would be through concerns like that. Now, I think this would be much harder to sell the people of South Carolina, private corporation. I just wanted to call that to your attention.

MR. WORKMAN: I think in a case like that, though, to avoid what Emmet has brought up from time to time that he considers to be the abuse of eminent domain by public utilities now, this thing should not move in that direction, and that that approach could be made through the insurance company having to gear itself in with a housing authority or a plan or something, but the approval should be restricted to a public body.

MR. SINKLER: I agree. I just wanted to point that out.

MR. STOUDEMIRE: This Georgia thing says, "and to sell or disposition of such areas to private enterprise for private uses or to public bodies for public uses".

MR. WALSH: That's the same thing we have in our amendment now.

MR. STOUDEMIRE: And in Georgia the City takes it over and then sells it to Prudential to develop it.

MR. WALSH: I don't believe that would cause any real problem. For instance, Alcoa that had this big one out West, it was undertaken by---

MR. WORKMAN: Some public agency.

MR. WALSH: Public agency did the whole thing and Alcoa developed the plan and bought everything from the city.

MR. WEST: We get to the question, then, those in favor of including the referendum provision, raise your hand.

MR. McLENDON: Let me ask you another point. I personally would be opposed to the referendum. If it takes that to get it passed, I would be personally happy to do it, but can we use it as a bargaining point and not put it in now and put it in later when we have to?

MISS LEVERETTE: I would rather see that than put it in now.

MR. SINKLER: What's you feeling, Mr. Chairman, on that?

MR. WEST: I'm inclined to think so, too. Well, those in favor of including the referendum provision, raise your hand. Opposed? So, we will delete that.

MR. STOUDEMIRE: I think two things. In your explanatory notes if we say that we have modelled on Georgia will carry much more weight than modelled on New Jersey. Because a great number of our people have seen the modern Atlanta.

MR. WALSH: Let's be sure, though, that in addition to this,we are going to in the section that puts these things in effect, we're going to specify that in York County and Spartanburg County, it will continue as it now is so there would be no question about that.

MR. STOUDEMIRE: Now, I would think that this statement, really, would fit in with the urban renewal---excuse me, I have already looked ahead and it would appear that we will have enough thought on the broad subject of eminent domain to have an article on this. A section from the Legislative part that we transferred. We essentially retained the old eminent domain article and we picked up one somewhere else. Now, my thinking would be that an urban renewal statement would fit there, rather than in local government, would it not?

MR. WORKMAN: We have an Article XIV on Eminent Domain.

MR. STOUDEMIRE: I think it's going to have to be retained, or else we're going to have to have a big body of foreign subject matter with some other Article. Now, the next one, John, according to my agenda is a final statement on these Constitutional officers. The Comptroller General has been made the post auditor by a previous decision and elected by a joint vote of the General Assembly. The Attorney General is left as he is. Elected by the people. The Governor now appoints the Adjutant General like the other forty-nine states. Then, that brings us down to the Secretary of State and the State Treasurer and the prior decision was that these two officials would be appointed by the Governor, but the confirmation of the appointment by both Houses of the General Assembly as opposed to the Senate. So, that's where we are. I think that covers them all.

MR. LINDSAY: Mr. Chairman, I have been absent, but I would like to hazard one opinion concerning this matter of taking the Treasurer and the Secretary of State out of the popular vote or out of the election of the people's choice. You are taking a right big swipe at them when you take the Comptroller General and the Adjutant General. Those can be probably justified and so can the others, but I'm just thinking about purely and simply the question of whether our work is going to be aborted or killed or nipped in the bud before we get started. The people rather overwhelmingly voted against the Superintendent of Education proposition this past time.

MR. WORKMAN: That wasn't much of a vote.

MR. STOUDEMIRE: Excuse me, the Superintendent of Education we recommended be appointed by the Board.

MR. LINDSAY: You're talking about not only depriving them of the Superintendent of Education, but in one fell swoop the Adjutant General, the Comptroller General, the Treasurer. They aren't going to like it. They're going to kill your proposal just on the basis of that without considering its merits. Everybody to his own opinion, but I think, frankly, we're defeating our own purpose when we go too far with that. Those that have any nit picking to do with any other proposal in here---they don't like the definition of urban renewal, they aren't going to fight urban renewal, they're going to fight the Article if you propose it in the form of an Article or they're going to fight the whole ball of wax if your propose it in one ball of wax by getting the people down on the constitutional revision because of what is going to be contended as a deprivation of their rights to elect their officers. You and I can sit in this room and we can all agree that it's the best method to get the best man, but I don't know whether the next candidate for Governor is going to say that the people are not competent and qualified to get them a Treasurer or not. What I'm saying is, you've got political questions involved in this that are a lot more inherently dangerous than the other matters---I just wonder whether or not you ought to take a chance on the work of the Committee on Constitutional Revision being set back purely on the simple passion of the question that is going to be aroused on the people being deprived of the right to elect these State officers. You know, we've got one large segment of people that aren't going to like giving up the Adjutant General. These boys in the National Guard, they rather enjoy their little election soirees. I'm concerned that we are, in effect, taking all constitutional officers and saying that the people can't elect them.

MR. WEST: I don't know whether you have gotten it directly, but the _____ said he would fight this whole proposal.

MR. LINDSAY: I don't think the Committee ought to be intimidated, but I do think you're going to have a lot of people that might be really interested in constitutional reform, but don't take to the idea of depriving the people of the right to vote.

MR. WORKMAN: I think Jack's point is well taken. We differ on our valuation of the public interest. I don't think the public is going---there will be those who will rise up on their hind legs, but I don't think that the public, generally, gives much of a hoot about the Comptroller General, the Secretary of State. I know _____ and _____ are all shook up about this thing.

MR. LINDSAY: Somebody will sell them a bill of goods that the people are having something taken away from them a la Strom Thurmond and Edgar Brown.

MR. WALSH: That's the perfect example.

MR. LINDSAY: It just gives somebody that wants to fight the proposal and there will be plenty of people that are not going to be happy with all of this. It gives them something to attack without really attacking what they are opposing.

MR. WORKMAN: Let me cite another example that necessarily has to be qualified. We had a pretty good measure of publicity within The State circulation area on this particular point. We covered it as a news item and then I had editorials on each of these proposed changes and we haven't gotten the first letter of opposition to any of that. We weren't waving a red flag or trying to get any emotional reaction, but we were advancing the argument as to why the Committee had initially recommended these changes.

MR. LINDSAY: It's not in proposal form yet, though. Also, the other side hadn't been heard from. I don't think we ought to be intimidated, but we've got to be practical about it.

MR. SINKLER: I think there's another consideration that should be given and I don't think our officers have given it this consideration. Inevitably, if we leave these two officers to be voted on, we are going to see teams of Republicans and teams of Democrats and maybe in the final analysis, it's better to have a team approach to the electorate than an individual. I think all of us, really, are approaching the thing on the idea that we wanted to remove these officers from politics, particularly the Secretary of State's office whose got an important ministerial duty to perform, not only in the field of public securities, but in the field of U.C.C. and all the many things that have been shoved on his office. And actually you need a competent guy down there at all times and I think the argument that you keep the man in office---I think what we really want to do is to preserve the system. I have my doubts about it, but these guys particularly feel that they would preserve the system better by leaving it the way it is. I don't know whether they are right or not.

MR. WORKMAN: All of our argument from the very beginning was how to maintain that stability.

MR. SINKLER: That was our approach. There's no question about that.

MR. WORKMAN: The best method whereby the best man could be selected and the reason that lies back of all these arguments, Jack, is that

we think that with partisan politics coming along, that we've got a better chance of getting a qualified Treasurer, a qualified Secretary of State, even keeping the same man across party lines which I think could be done, but if you've got a slate running--- Democratic slate, Republican slate and the extreme example that I have used for example---this is purely postulation, but if Westmoreland were to retire and come back to South Carolina and run for Governor as a Republican and name John, Joe and Bill as his slate for Secretary of State, Treasurer and everything else, I think he'd go in with a landslide and that the present office holders would go out. I don't know who would be named, but I would prefer that the present officers retain their positions and I think this way is more likely to keep them in office.

MR. LINDSAY: Of course, I don't agree. I respect your feeling, but I don't agree.

MR. McLENDON: I've come to change my mind about the thing, too. The thing that has bothered me because all along we've seen the hurdles and the hazards of other constitutional study committees. I believe this is a hazard or a hurdle that we just might not be able to get over and, too, didn't you read to us out of the Book of States that if we did this, we would be in the distinct minority. That the great majority of the states elect both the Secretary of State and the Treasurer and then we would have a hard time justifying why we would go from an elective office to an appointive office when forty-five other states continue to elect those. We are going to have a hard time justifying some of it. I wonder if this isn't the area in which we might go back.

MR. LINDSAY: I'm afraid---everybody agrees that there are very important matters involved in this. I'm just wondering whether that is of sufficient importance to possibly undermine the whole ball of wax.

MR. WEST: That's my opinion. I think theoretically it's probably the thing to do, but practically speaking it doesn't make really any difference.

MR. LINDSAY: I question whether or not two-thirds of the General Assembly of South Carolina are even going to vote to submit it to the people.

MR. WORKMAN: A lot of this is, I think, supporting argument for a Constitutional Convention, but the big question confronting us on this, specifically, and on other matters, is to what degree are we willing to accept something less than we think is right in order to _____ the probability of its acceptance.

MR. WEST: In other words, are we compromising now or not or how far.

MR. McLENDON: I think if you don't compromise, we just as well adjourn because you wouldn't get anywhere.

MR. WEST: Shall we take a vote on it? Those in favor of retaining the situation as voted upon, the appointment and confirmation, raise your right hand? Three. The Chairman votes. Three to four.

MR. McLENDON: Since the vote has been taken, I'll tell you that Mr. Blatt stopped me on the way out and he said that he couldn't come, but that he was fearful of what we had done before and that the political situation was such that, if for no other reason, he would vote to rescind our action because he just felt like exactly what Jack said. It would just be a hopeless proposition. I'm giving it to you for what it's worth.

MR. WALSH: I didn't feel too strong on the thing one way or another and I really believe you're probably doing the right thing.

MR. STOUDEMIRE: I would make only this one comment. If we assume that the Preparedness for Peace Commission Report in 1946 was based on a sound, legal position, which I assume it was, it took the position that the General Assembly, by law, could define the duties of the Treasurer, the duties of the Comptroller. In other words, they worked within your constitutional position, but to set up the reorganization that they advocated, they wholly redefined the duties of the Comptroller as it now exists and defined a whole bunch of other duties and I would assume that the General Assembly could still---you could elect a State Treasurer who never goes to the bank, I assume, if the General Assembly would define his duties.

MR. WORKMAN: There's nothing in the Constitution that's sacred about what they do. I want to ask this. By virtue of the vote that we've just had, does that mean that all six of these individuals that we have---

MR. LINDSAY: I was just talking about the two. Frankly, I think you're going to have problems with the others.

MR. WORKMAN: Our vote, then, was on the Secretary of State and the Treasurer only.

MR. WEST: That's right. O.K. What's the next?

MR. STOUDEMIRE: Item C. I don't know whether it's worth being on the agenda or not. Back when we did corporations, we left undecided whether we were going to call it "Corporations" or "Commerce". You know we stripped everything out except for two broad statements. Some states call that subject "Commerce". In other words, we left in there---we approved the general statement on "the General Assembly has the right to regulate common carriers and public

utilities" meaning private utilities in this case and approved the general short statement on "The General Assembly must, by law, provide for the regulation of corporations", you see. Our old title was "Corporations".

MR. WORKMAN: Huger, you got any thoughts on that?

MR. SINKLER: I think "Corporations", our old title.

MR. STOUDEMIRE: I'm more inclined to that because a electric company, South Carolina Electric and Gas is still a corporation even though it may be a special category.

MR. WEST: If there is no objection, we will keep the term "Corporation". How about D?

MR. STOUDEMIRE: Number D. This brings back---I read those minutes very carefully in there and this is primarily Emmet talking, I think, where he was bringing up what he thought was the need of some type of a statement in this same Article now on---no, no, Emmet was on the other side here. Maybe it was Workman. Statement on governmentally owned utilities. You know we had a big argument over the word---we were talking about public utilities and most of us defined that as being Duke, S. C. Gas and Electric and so on as used in legal terms.

MR. WORKMAN: I think that Huger and others moved in to indicate the desirability of keeping that term. Emmet was concerned with some other limitation on utilities, I believe.

MR. WALSH: Well, it was just my view that we ought to permit what is now permitted. That is, for instance, a majority of---particularly your smaller towns, own their gas and electric distribution systems and if anything needs to be stated here to continue that, we ought to put it in.

MR. STOUDEMIRE: Let me make this statement now. You remember we retained the franchise provision within the Municipal Article.

MR. WALSH: This is not a franchise.

MR. STOUDEMIRE: O.K. I want to make sure if he is talking about something in addition.

MR. WALSH: I'm talking about something in addition because in the present Constitution there is a specific provision permitting cities and towns to purchase, own and operate.

MR. SINKLER: That goes in as a result of the Parris Mountain fight.

MR. WALSH: I think we shouldn't leave that in the air. I would suggest that we leave it just as it is with whatever necessary wording.

MR. STOUDEMIRE: I don't know what the Committee desires about it. We retained something definite on the franchise thing, you see. Section 4 of VIII. Now, it would appear to me that if you want to make absolutely sure that a municipality can own and operate an electric plant, that this could simply be done by adding one more sentence to that Section.

MR. WALSH: That would suit me all right.

MR. STOUDEMIRE: Providing "that nothing in this Section shall be intended to keep a municipality or a public corporation" from doing these things.

MR. WORKMAN: I was suggesting that the Constitutional reference to utilities be made to refer to whether privately or publicly owned in terms of regulation by the Public Service Commission and other adherents to regulatory bodies. Mac's position was that the Santee-Cooper, of whom I was primarily thinking, was,in itself, a governmental entity and should not be subject to another governmental entity.

MR. SINKLER: Here's the difficulty that occurs to me. Some of these Western states where the distinction between governmental pusposes and proprietary purpose is drawn very sharply. A private city has to go before the Public Service Commission to get permission to raise the water rates. Now, from a practical standpoint, that deprives that municipality of a right to sell bonds because the guy who buys those bonds is going to be worried about constantly going before the Public Utility Commission to make the city comply with a covenant to establish rates and charges sufficient to provide debt service.

MR. WORKMAN: Brings in a third factor.

MR. SINKLER: Brings in another factor and I don't think there has been any abuse in South Carolina of---certainly, in the water system which has been responsible in large measure for some of our industrial development here and I think it's something we can't do without so that I did not want to see municipally operated waterworks systems subject to Public Service regulation for fear that you would get into a political situation on the subject of rates when a guy whose water bill is a little too high and fusses all the time and as a result a municipality couldn't sell bonds when it had to do it to furnish the services and,to put it frankly, to help bring industry in.

MR. LINDSAY: A municipality now, like my town, in the electrical business, there is absolutely no restraint on anything they want to make the rate, is there?

MR. SINKLER: No, but there is a pretty effective yardstick furnished by Carolina Power and Light over in your section as to what they charge comparable cities.

MR. LINDSAY: That is ineffective.

MR. STOUDEMIRE: I don't think it makes any difference. If you don't have a high water bill or an electric bill, you have high property taxes.

MR. WEST: It probably averages out pretty well.

MR. SINKLER: I think it would cause Moody to drop the rating, for instance, on Columbia or Charleston, maybe from A to B which costs more to borrow money which sort of hurts you all the way down the line.

MR. WEST: I think the places where the real inequity, real discrimination comes is where the city serves outside the city limits. There is absolutely no restriction. Within the city the people can vote out the mayor and councilmen, but the people outside the city have no remedy. They could pay double water rates, double electric rates. They don't have any recourse in the world.

MR. LINDSAY: Is there anything in the Constitution to prohibit Legislative or statutory action?

MR. SINKLER: No.

MR. WORKMAN: Let me withdraw my argument on the thing because in the abstract I think that all agencies competing within a given realm should be subject to the same regulations, but in the practical points that Huger brings up and these others, let's just take a vote on it and move on.

MR. STOUDEMIRE: Mr. Chairman, just to make sure I know where we are, really. Now, we took out from the Constitution the Constitutional provision that provided for a Public Service Commission on the assumption that the General Assembly would turn right around and re-establish one. But, of course, under our revised Constitution we're putting in a statement that the General Assembly shall, by law, see that private utilities are properly regulated and that's all we said. Now, I think that puts us right back where we are now. That where there is no Constitutional protection---well, the City of Bennettsville has the perfect right to charge whatever it wants to for its electricity and its water without the Public Service Commission getting involved in it whatsoever.

MR. LINDSAY: Unless the Legislature would bring action.

MR. STOUDEMIRE: All right. That is the same position that we are in under the new Constitution as we were in the old, as I see it.

MR. McLENDON: That's where we want to stay.

MR. WALSH: Except that I do feel that we do want to put this proviso that they do have the right to purchase, own and operate which is now in the present Constitution.

MR. SINKLER: Don't have the vote.

MR. WORKMAN: So that it would include a provision to what effect---

MR. SINKLER: To the effect that they may own and operate utilities. I think you might just as well say,gas, water, electric.

MR. WORKMAN: That municipal corporations may own and operate.

MR. SINKLER: Right. Under such conditions as the General Assembly shall from time to time---we have a provision there requiring that no city or town can establish a waterworks system without a vote of the people.

MR. WALSH: That's no longer necessary.

MR. STOUDEMIRE: I think, in our meeting two times ago, we probably took out Section 5 as a late adjournment item. Waterworks, sewer systems and so on. I think the effect of this is putting it back in in modern language. Take out ice plant.

MR. WORKMAN: And gearing it to the right of municipal corporations.

MR. WEST: Any questions? Any disagreements? We'll pass on.

MR. STOUDEMIRE: Now, E on this home rule, application of state-wide laws. Dr. Bain has not had time to get a statement that he wanted to present to us today. You remember we had some discussion on how do you make sure that state-wide water pollution, traffic and everything else applies to a home rule town. Get the exact wording. There was no disagreement that everybody wanted it to apply.

MR. LINDSAY: You're talking about strictly municipalities.

MR. WALSH: All metropolitan areas.

MR. STOUDEMIRE: Larger counties. 100 inhabitants per square mile.

MR. WORKMAN: If we got, for example, Jack, consolidation of Richland and Columbia and if they set up a home rule pattern, it could not, on its own motion, run contrary to State law that affects pollution or police.

MR. WALSH: Mr. Chairman, on this question of our provision for local government, I've read over what we had and I don't think now is the time to go into it until we get the revision from Dr. Bain. I really believe that perhaps we ought to make some of those self-executing. It is a little nebulous in my mind, but my inclination is that we probably ought to make some of that self-executing and I'd like to wait and let his revision come forward and then discuss it at that time.

MR. SINKLER: Would it be a good idea to put a provision in the Constitution "except as otherwise prescribed, the provisions of this Constitution shall be deemed self-executing", or would that cause confusion?

MR. STOUDEMIRE: I think that sort of goes in automatically if you base it on your old schedule.

MR. WORKMAN: Unless there's a specific by which it can be made self-executing, it can be ignored.

MR. STOUDEMIRE: One thing we've got now. You can bring pressure on the Governor to bring a case, but usually there is a self-executing proviso. John, that brings us to part II. Emmet and I discussed this a little bit over at the State House this morning and I really think that Bain will have this thing redone before too long. That we can speak more to the question and shorter once we see the revision, based upon our decisions last time and there probably are going to be other gaps that come to light. That is an awful big job of overhauling. Gentlemen, I put number II in here. I may be opening a Pandora's Box. Whether anyone feels particularly strong on a particular thing we left out.

MR. WORKMAN: This gets to the liquor question. My position with respect to liquor which we kind of by-passed on the first go around because we did not propose to make any effort to upset the vote of the people just expressed, but I'm still of the conviction that as a Committee charged with revising the Constitution that we will not determine the merits or demerits of any particular form of liquor control should recommend that it be taken out of the Constitution and that whatever the prevailing will of the people is, as will be done in so many other things, be put in the statute. I don't believe that that portion of it, about the hours, the drinks, belong in the Constitution. We were arguing about this before we had the referendum, that it didn't belong in the Constitution. I think it

still doesn't belong in the Constitution. It can abide by the vote of the people, but get it out of the Constitution.

MR. LINDSAY: Didn't they vote to keep it in? By their vote, they refused to take it out of the Cosntitution.

MR. STOUDEMIRE: I could argue the other way. That, really, they voted not to have open bars.

MR. LINDSAY: The technical question was the repeal of those sections of the Constitution.

MR. STOUDEMIRE: I say the people, though, really gave the General Assembly a mandate not to pass a law, assuming we had no constitutional provision, to open bars.

MISS LEVERETTE: I don't think they cared where it was.

MR. WEST: Bill, I agree with you 100 per cent that it is archaic and probably unwise to have the specific provisions. In many instances, the provision thought to be prohibition in nature really don't have that effect. What would you propose? Just eliminate any reference or just say the General Assembly shall prescribe or what?

MR. WORKMAN: What's the Section on that?

MR. STOUDEMIRE: It's VIII, 11. It would appear to me that if you're going to take it out, then you can just let the Constitution remain perfectly silent which automatically gives the right to the General Assembly to regulate or you can do it like we did prisons and mental health and other things. That you just mandate the General Assembly. That the General Assembly must enact laws for the regulation and control of alcoholic beverages.

MISS LEVERETTE: I don't think you'd need to mandate.

MR. STOUDEMIRE: No, because if you get beyond that, you're getting right back to, in your Constitution with similar---

MR. SINKLER: As much as I'm in favor of letting the General Assembly regulate it, if you take that thing out now, you might as well just kiss our work goodbye. I thought we voted to just leave it like it is and hopefully some day we would come along and do something about it.

MR. WALSH: I'm afraid that if we don't leave this thing in here, practically word for word, this thing will go up in a puff of smoke.

MR. WORKMAN: Well, I think that the statement can be defended as constitutional where you say "the exercise of police powers, the General Assembly shall have the right to prohibit the manufacture and sale... The General Assembly may license persons...". This is constitutional permission is granted, but stick in the statute where you say "That no license shall be granted to sell...in less quantities than one-half pint..." or the hours. That should be statutory business that I think ought to be eliminated.

MR. WALSH: What would you think about putting in a local option thing in the Constitution?

MR. LINDSAY: I think you can really get out on a limb. I'm afraid you're getting out on a limb with this proposition of getting involved in this Constitutional revision with this liquor question. It's just a question of how much statesman you want to be.

MR. STOUDEMIRE: I think part of this depends on what method you're going to recommend to change the Constitution.

MISS LEVERETTE: I think a lot of these, just as Bill said a while ago, we've been talking a long time about what the General Assembly might do and I think that we've reached the point now when we go back and look over this material that---are we thinking in terms of the General Assembly or are we thinking in terms of the people.

MR. WORKMAN: Well, let's see if we can't reduce it to a question.

MR. WEST: Shall we re-open the liquor question with the view of eliminating the statutory materials? Those in favor of reconsidering the vote whereby we agreed to the liquor provision as it is presently written will raise your hand. Opposed? Three to two. Leave it as it is.

MR. LINDSAY: I just wanted to ask---I just notice Article VII on County Government and I was just wondering if somebody could briefly tell me what was done. I'd like to report to you on the function or non-function of another Committee that's suppose to be looking into that matter and to advise you that that Committee is not functioning. It met on one occasion and organized and that's the end of it. So, if County Government is to be studied and treated, it will have to be studied and treated by this Committee if you deem it is a matter of Constitutional consideration and evaluation. If it should be statutory, all I can tell you is that the Committee to Study an Optimum form of County Government is kaput.

MR. WORKMAN: This is a point that we referred to just a moment ago. When Dr. Bain at the University drafted the Local Government Article for us, we went over and weren't quite satisfied with, is redrafting it and---

MR. LINDSAY: Is that Article VII?

MR. STOUDEMIRE: Article VII will be merged with a new article on Local Government, Jack. Number 1, your concepts of merger, changing boundaries and so on would not be materially different from what they are now. There could not be more than forty-six. The General Assembly, then, by law, must set up five classes of counties, based on population. You could prescribe, then, for each of these five classes as twenty optional forms of government for each class if you wish.

MR. LINDSAY: There would have to be something provided that would mandate the General Assembly to do that.

MR. STOUDEMIRE: No. Now, also in addition to setting up five classes with as many options per class as you wanted, then there would be---you could treat a number of county things that would apply to all counties under general county law. That's basically, in brief, the concept.

MR. LINDSAY: You're not in any way trying to impose constitutionally the reorganization of county government, as such.

MR. STOUDEMIRE: You would, yes. You would have to have five classes. You would have for class 1, let's say, twenty to thirty thousand. They could have manager. They could set up a board, elected by the county at large. A board by wards. A combination.

MR. LINDSAY: You are mandating some action. What if a county didn't take action?

MR. WORKMAN: That's what Emmet was getting to, I think, in part, when he said that we left this section pretty well open ended with regard to specifying that local government shall be established. This is the thing we expect Bain to come back with.

MR. STOUDEMIRE: Jack, one additional thought. Counties, beginning about Aiken and up in population. They could come in and unify under a single government, call it what you will. Aiken City and Aiken County and provide their own charter, but only for the larger. Home rule would not be, under the original concept, would not be allowed for your smaller.

MR. LINDSAY: Well, under the broad language that you're using, say a county fell---say, my county fell in a group, all I would have to do is propose for my county anything I wanted to do, just call it group two.

MR. WORKMAN: Within these selected options.

MR. STOUDEMIRE: You'd have to get the option in there that you wanted.

MR. LINDSAY: You're allowing as many options within the five ultimate situations that you want to propound and the General Assembly wants to propound.

MR. STOUDEMIRE: I don't see how you can prevent this because Marlboro County may insist on electing their members at large,but Marion County you never would get to agree to anything if you didn't segment it.

MR. LINDSAY: There's a lot to be gleaned from what you're saying, the fact of the matter is that reorganization of county government has got to be statutorily done, rather than Constitutionally done.

MR. STOUDEMIRE: That's right and I don't see how it can be Constitutionally done, really.

MR. SINKLER: Well, five classes. Several of us had reservations on that, I think. Maybe I was the only guy that had reservations on five classes at the beginning of the discussion. I just figure you've got to see this re-write before you can take---

MR. STOUDEMIRE: As soon as Bain gets that re-write done, according to our normal procedure that would come to this drafting committee, but I will get it typed and Xeroxed and get it out to you and this will be forthcoming in the near future.

MR. WEST: Anybody else or should be pass on?

MR. SINKLER: I was very much opposed to this mandatory Constitutional Convention after thirty years. I didn't get very far with my argument there because it seems to me that that is about the most unwise thing that we have done because you could catch South Carolina with a Governor such as Huey Long and you'd have a pretty sorry Constitution.

MR. LINDSAY: You mean you're going to provide that there must be a Constitutional Convention?

MR. STOUDEMIRE: No.

MR. SINKLER: Must be a vote on it. Must be a vote on it every thirty years. The people must vote on it. I think the only minor victory I got in the thing was the provision that a majority---it must be ratified by the people again. It just struck me that that's going to stir up a lot of trouble and thirty years isn't a magic time for having a revision of the Constitution. I guess I was just an old status quo guy.

MR. LINDSAY: I'd like to hear the arguments in favor of it. It looks like to me you're building in an uncertainity about the existing document.

MR. SINKLER: Exactly what you're doing.

MR. WORKMAN: You're building in an opportunity for the people to improve the document if the Legislature won't do it which is the history of Reynolds vs. Sims and all these other things.

MR. LINDSAY: What you are doing, really, is mandating the General Assembly.

MR. WORKMAN: No, what we're doing is mandating the General Assembly to put it before the people---

MR. WALSH: Once every thirty years.

MR. LINDSAY: You're mandating action in lieu of action by the General Assembly.

MR. WORKMAN: Right. If the General Assembly determines that a Constitutional Convention needs to be conducted at any time, they can call it or if they want to change the Constitution, they've got the right to initiate it. What this does is to allow the people the periodic review of their basic form of government and a chance to decide for themselves whether they want it changed.

MR. LINDSAY: Is there any precedent for this in any other Constitution?

MR. WALSH: Oh, yes.

MISS LEVERETTE: I think about half the states have this.

MR. STOUDEMIRE: The way this came up, they also agreed last time that the General Assembly could have the right to propose a new Constitution so then we thought that the taxpayers ought to have the same privilege, only once every thirty years.

MR. WEST: All in favor of reconsidering the vote whereby an automatic provision on a Constitutional Convention vote is put in every thirty years, raise your hands. Three. Opposed? Four. All right. Sarah, you have a report? We asked Sarah to do a little research on procedures used in other states in the matter of Constitutional reform. Whether it has been by amendment process, Constitutional Convention, overall amendment, piecemeal amendment or what have you.

MISS LEVERETTE: Well, actually, this is going to take a lot more

time to really get a good picture of it because a lot of them have combined these methods. There's quite a variety. I did kind of categorize these. What I did, I included, in view of the fact that most of this Constitutional revision has come about in the last six or eight years, as a result of pressure and changing conditions, as well as Reynolds vs. Sims, that I limited this. You have to have a cut off base somewhere and I assumed that the Committee's interest in this dealt primarily with this current flurry of activity so this is primarily set up as far as about 1960 _____ and under this I came up with seven states. Now, there are actually fifteen that we took into consideration where there's been some major activity since 1960. Seven of these have used the Convention method. Now, out of the seven, Arkansas and Maryland are still pending and they have used the Convention method. Michigan, of course, accomplished their revision through the Convention method. New York failed through the Convention method. Missouri is still in the process. Rhode Island, after thirty-three months of Convention work has adjourned and are going to convene again. New Hampshire accomplished theirs through Convention. Now, there is a second group of states that have accomplished their purpose, in some instances, through limited Convention. There are four of these. Connecticutt. New Jersey. New Jersey is one, actually, that did theirs prior to 1960. I mention these because---not because I think limited Convention is going to be of any concern to this group, but it is used. Tennessee did and Pennsylvania used a half and half method. It was a sort of political situation. They started out with a Commission Report and an article by article revision through the Legislature and submission article by article. When the new Governor came in---they were going to do the rest of it later on---when he came in, he wanted a Convention right then and they did establish a limited Convention to finish the job which I believe is still in session. We have three, California, Georgia and Maine, who have worked on the Commission idea and theirs has actually---California in 1966, I believe they amended about seven articles through the article by article method. Now, this took some changing as I imagine that we would have to do, as we talked about in an earlier session. They used the so-called "gateway amendment". They posed the question to the people, "Will you permit the General Assembly, the Legislature, to submit an article by article revision to you". That's exactly the way it was phrased or "an entire Constitution", and the people passed that.

MR. WORKMAN: Gave them the two alternatives.

MISS LEVERETTE: Let me see how it actually read. They meant that if the General Assembly wanted to do it through a complete revision or through article by article. They approved both methods. That is the only one, I believe, that has been done that way. Pennsylvania, I believe, and Illinois may have had to use this same gateway amendment which, I think, is the proposition that will be facing us if we think in terms of Commission and article by article revision.

MR. WEST: Let me go back. I like to keep sort of a box score. You say seven states have tried the Convention method since 1960 of which how many states have been successful, how many have failed and how many are still in process?

MISS LEVERETTE: Well, Maryland and Arkansas--both of theirs are awaiting a vote. Michigan accomplished theirs and New Hampshire accomplished their's. Missouri has not. Rhode Island has not. New York and Kentucky failed. I did not classify Kentucky in there, but their's failed.

MR. WORKMAN: Is anybody with Kentucky or is that a separate category?

MISS LEVERETTE: The only one I could find.

MR. WEST: What was the method in Kentucky?

MISS LEVERETTE: It was a draft prepared by a Commission and submitted directly to the people.

MR. STOUDEMIRE: On the right that the people have at all times the right of changing their government.

MR. RILEY : New York and who else failed?

MR. WORKMAN: Kentucky.

MISS LEVERETTE: Kentucky failed, but not by Convention. In other words, I think Kentucky---

MR. STOUDEMIRE: Has Missouri failed or pending?

MISS LEVERETTE: Missouri is pending.

MR. RILEY: Missouri and Maryland are pending.

MISS LEVERETTE: Actually, Maryland---I don't think there's much question about the success of Maryland because it is reported as being one of the best prepared Conventions that has ever existed. They had such good background for everything, well planned, well publicized. Arkansas is still awaiting the vote of the people as well. Both of these---Maryland's will come up in May, I believe it is.

MR. LINDSAY: If you have a Convention and the Convention promulgates the Constitution, then it has to be submitted in toto to the people?

MR. STOUDEMIRE: No. There are two arguments. Most of these people have elected to submit the work of the Convention to a vote of the people.

MR. LINDSAY: But you don't have to have that-

MR. STOUDEMIRE: Now, South Carolina in 1895, we promulgated ours. We assume that a Convention still has this right.

MR. LINDSAY: But these other states apparently don't have that right. Shouldn't the people have a right to vote on the Constitution even though you have a Constitutional Convention?

MISS LEVERETTE: Let me just mention here---I didn't want to take the time up with reading all this---let me say this, John, if I may. I think that this information here should be gone into a little bit more in depth because of the importance of the question of method. Now, the important right at this point seems to be rather cut down by the fact that there seems to be only two of us in favor of a Convention. At the same time, since I'm submitting the report, I will say that it does need a little more going into and time enough to get the material, copies for the Committee. Because I think these things are significant. There is a great deal in here dealing with political situations, the reasons why these things went the way they did and I think in some instances we'd get a lot from it. "All but twelve states make specific provision for conventions and even in these the courts have upheld the use of the convention as a legal revision procedure. Limited Constitutional Conventions wherein the Legislature limits or prescribes the scope of the activities of Convention have been used in some states, but it must be noted that the concept of the plenary power of a Convention nullifies the validity of such limitation." Now, they allowed it in New Jersey, but only as a permissive---well, they didn't have any alternative. "Regardless of this fact, however, partial revision has been accomplished by limited Convention in several states, primarily in emergency situations." School integration. Reapportionment situations, things of that sort. Now, the Commission form has been used and I do want to make this clear, that in almost all of these that some type of Commission has been involved and the work of a Commission in the various states is not standardized. In some instances, it is nothing in the world, but a body to make studies and recommend whether there should be a revision.

MR. LINDSAY: Nominating committee.

MISS LEVERETTE: Yes or in addition to that, they can make general recommendations.

MR. LINDSAY: Sarah, is there any other state that allows a Convention to promulgate and adopt a Constitution without having it submitted to the people?

MISS LEVERETTE: I don't know. I haven't checked all that.

MR. STOUDEMIRE: A few state Constitutions say that the work of a Convention must be submitted. ' Now, back in political theory, a Constitutional Convention in theory, is the people assembled and therefore as the people assembled, the delegates can elect to proclaim it. If the existing government accepts the proclamation, you've got yourself a new Constitution. If your existing government says they can't, then you're apt to end up in court and I think you can cite cases one way or the other.

MISS LEVERETTE: I think it has been done in almost every case.

MR. SINKLER: In South Carolina you've got a---I think the way Article XVI is now written, that if we saw fit to recommend a Convention, what we've done here would be meaningless because it would not be the slightest binding on that Convention.

MISS LEVERETTE: I don't think so. Legally speaking, that may be true, Huger, but I think experience as I have seen here is that most of these Conventions or what not are always preceded by a Commission and that Commission does a number of things. In some instances, they are purely educational bodies. That is, put on a public relations program. In others, they are appointed for the very purpose of setting up background material for the Convention.

MR. LINDSAY: All this material would be a recommendation to the Convention.

MISS LEVERETTE: That's all it can be, but it has been utilized.

MR. WORKMAN: Hasn't almost every Convention been preceded by a group, by whatever name, which assembled a working paper such as we have done?

MISS LEVERETTE: In fact, a number of these Commissions that have been established were established in anticipation of a Convention. That was their purpose and therefore I would say that their work has been utilized in almost every instance. Now, of course, they're not bound by it.

MR. STOUDEMIRE: I have not seen the final draft of Maryland, but preliminary indications are that the Study Commission had a very good batting average within the Convention.

MR. LINDSAY: Let me ask you this, getting back to the practicalities of the situation. Aren't we really just spinning our wheels talking about a Convention?

MR. WEST: For my information and I think to clarify these issues, let's see what alternatives we have.

MR. STOUDEMIRE: Is Sarah through?

MISS LEVERETTE: I was merely going to mention that when we speak in terms of a Commission, they're used for a variety of purposes, and what we're doing here now could be most useful, regardless of whether it's the Legislature, whether it's a Convention or what not. And the third method, the piecemeal amending method, is the one that I feel we would have to, if we do it this way through the General Assembly, it will have to be---there will have to be a preliminary amendment in order to accomplish that.

MR. WEST: Now, there are three basic methods. One is the Convention. One is the one-shot, the gateway as we call it. And the other is the article by article provision.

MISS LEVERETTE: Well, you can use the gateway amendment for the article by article.

MR. WEST: Both of these latter two would require a Constitutional amendment to the existing Constitution.

MR. STOUDEMIRE: The gateway has only been used in one instance, I think.

MISS LEVERETTE: It has been used twice, Bob. It was used in California and, I believe, again in either Illinois or _____.

MR. WEST: All right, on the Convention method we've got a batting score of what. Seven. Two successes and one failure and four in the process. In the submission of a new Constitution as a whole, what background do we have there? How many states tried that?

MISS LEVERETTE: Well, those actually---Kentucky failed on their particular method. Now, the submission as a whole, there has been none actually. These others have been article by article.

MR. WEST: Do you have a box score on the article by article?

MISS LEVERETTE: There are three that have tried it. Georgia accomplished something, but that was in 1945. California is the one state that has been fairly successful. Pennsylvania hits between limited Convention because it's using that, plus the article by article.

MR. WORKMAN: What about Maine?

MISS LEVERETTE: Maine is on a Commission basis right now. They are working on it.

MR. WORKMAN: My recollection was that Georgia used a one-shot proposition in 1945.

MISS LEVERETTE: In '45, they had a Convention, I believe. They are now going into a study Commission again.

MR. WEST: Let's see if we can get a general perspective.

MR. WALSH: That's been slightly over twenty years from the last major revision.

MR. WEST: Let's see where we stand and what our obligation is. Regardless of the legal make-up, we have determined that our obligation is to study the Constitution and recommend an acceptable document. Is it the feeling that we should make a recommendation as to the means or should we simply point out the alternative means?

MISS LEVERETTE: John, may I interject this right at that point? In two instances that I know of, the Committee did recommend a Convention and not only recommended it, but stated the time and when the delegates would elected and so on.

MR. WEST: The question is, how important do we feel that the mechanics of accomplishing the adoption of our Constitution is? Sarah, you and Bill, we will call the Convention advocates for the time being. Are you a Convention advocate because you think it is the most effective way or the only way? Do you have any particular reason?

MISS LEVERETTE: Two reasons. One, because I do not believe that a Constitution as out of date as ours that needs such wholesale revision can be accomplished through this other method and secondly, I think, if I may say this, that a Committee that is planning with the thought of going to the General Assembly---I know they have a say-so about the Convention, but the people can push that if they want to, but I feel that if it is planned with this idea of going to the General Assembly, the chances are that a lot of this might not get in.

MR. WEST: Now, the next question I ask is at what time do these methods become mutually exclusive of each other or do they? In other words, we'll say that the Committee is divided as it probably will be and if the majority say, let's try the Legislative route and it doesn't pass the Legislature, can the Committee then generate the League of Women Voters and others and try the Convention.

MR. LINDSAY: Let me ask you a question. If we decided, from a practical standpoint, that we've got to go through an article by article or use the gateway method in any manner, before come out with adopting it, isn't it a good idea to get that through the General Assembly? In other words, there will be a lot of people that

that will find some personal objection to some phase of it and that's going to determine, probably, their attitude on the vote in the General Assembly on proposing the Resolution to the people to vote on on the matter of whether they will allow and article by article amendment. In other words, if we decide that that's the way, the best approach, the only practical way to approach it, we just want to make that way possible for us to approach it. Why shouldn't we get that ball of wax out of the way first?

MR. SINKLER: Well, I think our idea was that we ought to submit what we think is a reasonably workable Constitution for the consideration of the General Assembly and, at the same time, recommend some means of implementing. In other words, we try to finish our work completely. Wasn't that the concensus of the Committee?

MR. LINDSAY: That's probably the best idea.

MR. RILEY: Huger, I'd be inclined to think that we ought to give some thought to what Jack suggests. In other words, we can, in the Committee, have our draft ready to present at such time as we want to present it, but once we get it complete, we could just hold it here.

MR. SINKLER: I think you would be asking the General Assembly to buy a pig in a poke.

MR. McLENDON: There is another side to that coin.

MR. LINDSAY: Except for this. You can get maybe two-thirds vote of both Houses to permit article by article submission. Let's assume that you can, but you couldn't get two-thirds of the General Assembly, to save your life, probably, to buy this deal as a package. Every time one man roots through here and finds something he doesn't like, he isn't going to vote for the mechanics of the proposition to even be further considered.

MR. RILEY: I'll draw the analogy of our fifty member Resolution before the Supreme Court decision.

MR. LINDSAY: In other words, what I'm thinking is providing the machinery and then the General Assembly can vote on this. It might be that some of the Articles won't get a two-thirds vote, but every Article that has an objection is going to detract from the mechanical means of accomplishing the revision by article by article treatment unless you've already got that matter out of the way. You aren't beguiling the Legislature or anything. That's just the practicalities of the situation.

MR. RILEY: Just tell them that we are still working which we are.

MR. LINDSAY: In other words, they would still have to pass anything that was submitted.

MR. RILEY: We are sure that needs to be done and I'm inclined to think the best thing to do is for us to keep working until we get the final draft in a month or two months, but go ahead with this, if we're sure that's going to be done.

MR. WORKMAN: We ought to, in my judgment, propose that the Constitutional amendment relating to methods of amendment be changed so as to enlarge the alternatives from the piecemeal and the Convention, which are now included, to include the possibility of an article by article approach or the submission of a total Constitution.

MR. LINDSAY: Make a preliminary report preparatory to making a report on suggested changes in the Constitution.

MR. WORKMAN: There would be then four alternatives and in any event, the decision as to which of these, would be in the hands of the General Assembly.

MR. LINDSAY: I'm afraid that you're never going to get this proposal through for article by article amendment if you lay this out there because you can't find a member of the Legislature that is not going to object to some of the terminology, phraseology or substantive matter contained in one of these changes and that's going to detract from your two-thirds.

MR. RILEY: It really won't be fair to the decision of changing the amending process.

MISS LEVERETTE: This is the thing that enters my mind is that as we stand now---we're talking about a procedure and not about this Constitution or this draft, but as we stand now, there's no way to get this through except to turn it over to a Convention.

MR. LINDSAY: What we want to do is to have the alternatives available for other treatment other than by a Convention which wouldn't preclude a Convention by any means. It would just broaden the prerogatives of the Legislature as to the manners of changing, or proposing changes to the people for Constitutional revision.

MISS LEVERETTE: At this point, we can't get a Convention---I mean we can't get a whole Constitution.

MR. LINDSAY: We ought to, frankly, treat the matter of the manner of amending our Constitution and get that out of the way before we bat this ball around. Otherwise, there are not going to be enough votes. That's a distinct possibility, I'll say.

MR. McLENDON: Because often the vote in the beginning is against the mechanics, rather than the substance. We often do that.

MR. LINDSAY: What I'm saying is, that we better provide the mechanical means before treating the Constitution.

MR. WALSH: Mr. Chairman, I think there is a good deal in what they say,and I'm looking at it now from a practical standpoint, that we might consider immediately the drafting of a preliminary report on procedure.

MR. LINDSAY : With a recommendation that it be implemented.

MR. WALSH: I'll say this, I rather agree with Bill Workman on this question of a Convention. I have a feeling that if the single issue of Convention or no Convention were to be put before the people of Spartanburg County at the next election,those members of the House that favored calling a Convention would get elected and those that didn't would get defeated. If you would put it on that issue alone, but so often, of course, it's difficult to run something on one issue. The probabilities of getting a Convention which I regard as really the bedrock and best way, because that is the only way that people have a way of speaking directly on their fundamental law. I recognize that we are operating under some practical difficulties that might dictate a preliminary report.

MR. WEST: Let me throw a compromise view that might answer some of the objections. Let's go, as soon as we get a preliminary draft, let's present a preliminary report to the General Assembly recommending a change in the amending process. Attach here what we call a preliminary draft and state that it is no more than that, and that after it is refined we will come up with a final recommendation, but because of the time situation, we want to get this through the General Assembly. If the General Assembly fails to give us an amendment process you can be pretty well assured that they are not going to approve this document ultimately. So, then the Committee will still be constituted, then, frankly, I would push next year for a Convention wholeheartedly. In other words, if the General Assembly would not submit to the people the amendment process this year, having a rough preliminary, not a final report, but a rough preliminary draft, but a firm recommendation on an amendment of the amending process, that they won't give it to us or the people don't buy it, then I think we have just about exhausted the Article by Article revision.

MISS LEVERETTE: Well, you know the point is, too, approaching the General Assembly is this, as it stands right now, we cannot amend the South Carolina Constitution in but one way, if we do a whole amending job, except through Convention. Can't do it. California

held---that was one State that I found that there was comment on this. They had the single amendment set-up that we had and though they didn't cite the cases, they said it was felt that that was---could not be done. You could not do wholesale revision and it meant amendment which is similar to our situation which lead to this article by article amendment.

MR. WORKMAN: Well, let's roll the clock back two years where we started off talking about submission which was to take bonded indebtedness as a vehicle and draw that up as a substantive change that ought to be made irrespective of whether we had a new Convention, that that was a change that ought to be made. It was the thinking of the group, originally, that that would be drafted through the Legislature, getting presumably two-thirds approval, of a bonded indebtedness Article. Then the Legislature would present that to the Secretary of State for inclusion on the ballot of 1968. He, then, would say, presumably, under his interpretation of the existing limitations on amendments since it related to more than one subject, that he was referring it to the Supreme Court for a declaratory judgment or to the Attorney General for an opinion on it. Then we would know whether or not we could go into the article by article approach under the present Constitution or whether we would have to amend it. Now, it may be that is an awkward way to go at it. My inclination would be to simply do as Jack says. Let's propose an amendment to enlarge the amending process to include the two additional provisions and get that drawn up, submitted and passed by the Legislature right now and aim it at November. Then, immediately thereafter we can come in with a specific amendment on bonded indebtedness which is going to take a little hasseling---I don't think too much, but a Legislative version of the bonded indebtedness can come out and then that can go, if we want it to, as an amendment in 1968 which would test the legality of it as a vehicle without the change, but in the meanwhile we guarantee the opportunity to go article by article or one-shot by a special amendment to do that.

MR. SINKLER: Of course, Bill, I wanted to do this in 1967 so that a test suit would be over with by now. In retrospect, I don't know whether that was such a good idea.

MR. RILEY: I think we all have had a real refreshing look at the whole thing. I know my view has completely changed. Where I was just looking at the narrow bonded indebtedness thing, I really have encouragement about getting big done. I would be prepared to proceed with a bill right now, a Resolution, joint Resolution, in an attempt to effect the amending change.

MR. WORKMAN: We enlarge the opportunity by which we can accomplish wholesale revision

MR. LINDSAY: Actually, after we do that, for information in the form of an additional interim report we could give the Legislature our preliminary thinking on it.

MISS LEVERETTE: Did you mean, John, when you were talking about this, that this should be submitted to the General Assembly entirely apart from any kind of a draft? We approach them on the standpoint that in order to get anything done, you've got to widen your procedures.

MR. WEST: You've got to get some additional alternatives.

MR. LINDSAY: I don't think we're going to have too much trouble getting that through. We won't have too much trouble because some of the stalwarts in the General Assembly---

MISS LEVERETTE: I don't think you'll have too much trouble for the simple reason that if the people want the Constitution changed right now, a wholesale revision, it would have to be a Convention and the Legislature doesn't want a Convention so they'd better open the door for something else.

MR. LINDSAY: Of course, some of those boys won't open the door to anything.

MR. WORKMAN: It could well be that in November of 1968, we could have one amendment which would enlarge the amending process. We could have, and there are those in the General Assembly who do favor the Constitutional Convention method, who may want to submit that question to a vote in November. I'm postulating what could happen. We could have that question going on in November. We could likewise have a question on bonded indebtedness voted on in November.

MR. LINDSAY: How can you vote on the bonded indebtedness thing if the Secretary of State refuses to accept it without going to court.

MR. WORKMAN: I mean we could make the effort.

MR. SINKLER: He probably wouldn't do it. I think he would accept the mandate of the General Assembly and let the courts decide it after the vote.

MR. LINDSAY: Huger, don't you think it might be better---time, I know is of grave importance, but don't you think if we decided to try to amend the amendment process, it might be better to not try simultaneously to amend the bond section without that?

MR. SINKLER : I'm not sold---I don't think we've got a---we've got some crises, but I think they can be resolved within the gamut of our own decision.

MR. LINDSAY: If the people, without beclouding the issue, would vote affirmatively on the amending process---of course, you're going to be delayed two years for getting an opportunity for another change on our bonded indebtedness provision, but they have been that way for a long time now. There certainly wouldn't be any question about the legality of the change if the people voted on it.

MR. SINKLER: Bill, I think you'd probably better eliminate the bonded indebtedness if we follow Jack's suggestion which I think, long-range, is the best suggestion we've had and I think, as modified by the Chairman's saying that we do submit to this General Assembly our preliminary thinking with the request that we be allowed to have hearings and get further ideas and to come up with a more polished document, assuming the vote in November was favorable or assuming that we would, at that stage, undertake to recommend a Convention. Of course, the reason why I don't think a Convention is going to succeed, as I see it, our Convention could proclaim a new Constitution. They could very well proclaim a unicameral Legislature and I don't believe you're ever---

MR. SINKLER: That's what the people are scared of. Merger of counties for one thing.

MR. WORKMAN: You would then deny the people the right to change their form of government.

MR. LINDSAY: I think the people ought to vote on any Constitutional change, whether they elect the delegates---they elect the General Assembly.

MR. WORKMAN: But the General Assembly doesn't trust them.

MR. LINDSAY: The General Assembly doesn't trust them and obviously the people don't trust the General Assembly.

MR. WORKMAN: I might argue, with some cause.

MR. LINDSAY: I would say, though, there's just as much likelihood of lack of cause and trust in the Convention, in my opinion, as there is the Legislature.

MR. WORKMAN: No. History has been otherwise.

MR. LINDSAY: Maybe so. You've got a good argument, but the people that are in the Convention are standing for re-election. They are free from the pressures of responding to the people's will. They don't have to stand for re-election. They could come over here and have a fine academic document, which might not speak the will of the people.

MR. WORKMAN: But if the people sent them here to do that specific job. They could send Phil Brown here from Dillon, they could send Tom Pope here from Newberry, they could send Lionel Legge and Huger Sinkler from Charleston.

MR. LINDSAY: They also could send a lot of other people.

MR. WORKMAN: That's the risk the people take when they send delegates to a Convention.

MISS LEVERETTE: The history has been in most of these Constitutions that I have been reading, first, practically all the authorities agree that you cannot do a good job of wholesale amendment without a Convention. Secondly, that in most instances your Convention are more conservative than they are radical.

MR. LINDSAY: What's the objection, Bill, to submitting the results of a Convention to the people for ratification?

MR. WORKMAN: The history of going to a Convention is---going back to our own in 1790, in 1895---

MR. STOUDEMIRE: Jack, I disagree with Bill. I feel very strongly that a Convention has the right to proclaim. But, on the other hand, I feel much stronger yet, that a Convention meeting in South Carolina in 1970 wouldn't dare try to proclaim a new Constitution without submitting it to a vote of the people.

MISS LEVERETTE: I agree with Bob on that.

MR. STOUDEMIRE: In fact, I think that this would be a campaign issue. I don't think what the Legislature puts in a law calling a Convention would be binding upon the Convention, but to satisfy your objection, the Legislature could try to get by with it by putting it in the enabling act that this document, prepared by the Convention, will be submitted which will bring the issue to the forefront.

MR. WORKMAN: Well, let me withdraw all my objections to ratification. What I've been arguing about is that, historically, I don't think it's necessary, but I have no objection to what is drawn up in Convention going back to the people---well, I do have some objection to it---

MR. WALSH: What Jack is arguing is exactly what some senator wrote Lord _____ in England quoting him on this question of trusting the people to govern their affairs and he wrote back that he wanted it clearly understood he never made any such statement and he didn't think that was the way it ought to be, and that was just a 100 years ago and there is a great deal of feeling that, basically, we've

got to kind of isolate the people from themselves, but I believe we've grown up in this State a great deal.

MR. LINDSAY: I honestly believe that in our present political climate that you would likely get a very high type Convention. On the other hand, I think you're sticking your head in the ground when you don't recognize the possibility that you could have a run away Constitution.

MR. WALSH: I would certainly recognize that you could have that, and if you had that, it would be because the clear thinking people will have stayed in their stores.

MR. RILEY: Let's face it. Constitutional reform, just like you said, is the most unglamorous, uninteresting subject to the average person in South Carolina.

MR. STOUDEMIRE: No. I don't agree with you. Jack, Let's look at the procedure just a little bit further. Let's assume, now, that the General Assembly of South Carolina, by a two-thirds vote, has passed a Resolution putting on the ballot calling a Constitutional Convention. We vote on it in November, 1970, let's say. I think as part of that, if you are going to get the people to vote positively, then people are going to have to get out and beat the bushes and there'd be a selling job on the part of somebody to get people to vote positively and as part of that, I think, you're going to have to take a stand that you'll vote for this Convention so they can draw up a document and they, in turn, will submit it back to the people. You're going to have to make some statements on it.

MR. LINDSAY: I think you've got to have it in your Resolution calling for the Constitutional Convention. You're going to have a lot of members of that Convention who are going to be thinking that that's the mandate upon which they were elected.

MR. STOUDEMIRE: Well, this could set the pace. You could have a gentlemen's agreement, but you can't enforce it.

MR. RILEY : Mr. Chairman, if we are able to work out among ourselves that a Convention, under certain terms and conditions as we're talking about ratification and so forth, was acceptable to this Committee, would it then be advisable in point of time for us to (1) submit the question of Convention to the General Assembly and do all we could to get it passed or have it defeated if we were unsuccessful and,subsequently,submit the amendment that we were talking about, broadening the amending process or (2) would it be more desirable to submit the amendment for broadening the amendment process and then attempt to come in with a Convention.

MR. LINDSAY: It looks like to me that if this Committee doesn't accomplish anything else than broadening the amendment process, we will have accomplished a great deal. Maybe it won't result from our _____, but future committees or interested legislators or citizens will have available to them a process of perhaps treating of a certain Article, such as bonds, that you can pass. It might not result in the wholesale amendment to the Constitution as we envisage as being desirable, but it will have, if it accomplishes nothing else, made it possible to treat of a broad subject matter such as bonds and accomplish some benefit in amendments to that limited extent. I don't know. I guess I'm kind of one that kind of feels like we ought to get half a turkey if we can't the whole turkey.

MR. SINKLER: I'm on your side.

MR. McLENDON: Mr. Chairman, let's look at it---we always are dealing with this practical application. My honest opinion is---I don't know a thing about the Senate---the 124 members over in the House, I believe if you submitted to the House today the Resolution for a Constitutional Convention, you'd have 120 noes. I don't believe you could get a Constitutional Convention hardly off the Speaker's desk. I don't believe you'd get a vote on it in the Senate.

MR. RILEY : Mike, I agree with you, but I think---

MISS LEVERETTE: Why is that the predominant method in most of these states that have done it?

MR. McLENDON: I don't know, but they're scared to death of numbers of things.

MR. RILEY: Mike, I've always thought the same thing, but I'm inclined to think now, if it were properly handled and there was an aggressive move to try to present it properly and get it passed, I think it is within the realm of possibility. I've always been very much opposed to it myself and I'm inclined to think that now, with the proper safeguards put in there, that I could support it.

MR. WORKMAN: Let's agree that the first thing we want is an amendment to enlarge the amending process.

MR. SINKLER: I move we adopt your motion, as I understand it, to be amended by the Chair, which is that we immediately recommend a gateway amendment to Article XVI which would permit the article by article process and in that same report to the General Assembly, we tell them that we hope to have a rough draft ready for hearing within whatever time table we arrive at.

MISS LEVERETTE: Do you mean to include in the amendment, Huger, only article by article or total Constitution?

MR. SINKLER: Either one. Article by article or total.

MR. WORKMAN: So that we have four alternatives.

MR. SINKLER: That's right. That we propose that much.

MR. RILEY: Well, now, let's think about that a minute. Jack, what do you think about that? They're talking about a two-pronged thing which would permit article by article amending or the entire Constitution amendment.

MR. LINDSAY: You might could get that through.

MR. WALSH: I think article by article. If we have that, we'd better stick with that.

MR. WEST: Why don't we put them both in and if there is any opposition, trade the one-shot.

MR. WORKMAN: This makes it purely enabling procedures for four separate---the decision still rests within the General Assembly. If the General Assembly doesn't want the single-shot.

MR. LINDSAY: That's why I think we can sell the---because before anything else is done, even if the people vote on this, the General Assembly ratifies this amendment, you've still got to have Legislative action and I can't see them opposing so vigorously a means of accomplishing a desirable change without doing what some of them are afraid of doing, that is, calling a Constitutional Convention.

MR. WORKMAN: This actually would permit the General Assembly on its own motion to come up with a complete revision of the Constitution and submit it to the people without reference to a Convention or Commission or Committee.

MR. RILEY: The General Assembly would sit as a Convention.

MISS LEVERETTE: That would permit them to do exactly what we've been talking about all along. We don't think the General Assembly will go for this, that or the other because in the back of our minds we were thinking of the thing going to---

MR. LINDSAY: It really will just broaden the prerogatives of the General Assembly.

MR. WEST : And not enhance the probability of calling a Convention.

MR. STOUDEMIRE: Do you really want to propose more than an article by article before you are in a position to say that the whole document needs changing? I think you'd leave yourself wide open. That you want to give the General Assembly, now, the right to amend the Constitution, give them the right to re-write a Constitution and you don't have your draft ready yet to, in all cases to justify this. It seems to me that you can do the same thing by article by article. There's no limit to the number of articles that you can submit at one election and article by article you can come up with a new Constitution.

MR. WALSH: I believe that if we just stick to article by article, we can do the whole thing that way.

MR. RILEY: That's all you're going to end up with. The General Assembly's not going to submit a single document. I don't believe it.

MR. WALSH: I believe that if we get the article by article, we will have added a great deal to the present amendment process. I think if we can come in with a clear, concise, one item request and try to push it through, there's a good chance that we can do that.

MR. SINKLER: I like the article by article because for instance, I would like to file a minority report on this automatic Convention. I think minority reports ought to be avoided if we can do it.

MR. WORKMAN: Well, it could conceivably be that article by article would permit wholesale revision by the submission of eighteen articles.

MR. WEST: Let's get on. The motion is that we submit a preliminary interim report as soon as possible citing that we are at a certain stage in our considerations. We hope to have a rough preliminary draft, but we think it is necessary and desirable that the General Assembly, this year, submit to the people for the 1968 general election a Constitutional amendment enlarging the amendment process so that the people may vote on an article by article amendment which will include other article germane to the article being amended.

MR. WORKMAN: I would suggest that in lieu of that, Mr. Chairman, that the submission of a proposed enlargement of the amending process be divorced from whatever preliminary report we make. That the Legislative members of the General Assembly, either House or Senate, would collectively sponsor the amendment---Joint Resolution proposing this amendment process and then that that be done in the name of the Legislative members of this Committee. And that reference to a report be made subsequent thereto and by way explanation when these things are presented on the floor of the House and the Senate, they could say that we have gone through the Constitution, line by line, section by section, article by article. We are now in the process

of bringing together a final working paper. We have yet to perfect the language. We have yet to have the public hearings. There will be submitted prior to the end of this Legislative Session an interim report, but, in the meanwhile, let's get this thing moving which will free the hands of the Legislature.

MR. WEST: I am trying to state your motion. To request the Legislative members to introduce the necessary Resolution calling for an amendment to the Constitution and that we not submit this as a preliminary report.

MR. SINKLER: I sort of think that the Committee ought to put itself on record on that.

MR. WORKMAN: We've got no access to the Legislature.

MR. WEST : We are on record as asking the General Assembly members to introduce---

MR. McLENDON: That's the sort of vehicle we use now.

MR. WALSH: I think we can all support that.

MR. SINKLER: Well, the only thought I wanted to get over, which I think is your thought, John. I thought it was very good that the General Assembly be told that---of the progress of our work and of our desire to have public hearings on the various---

MR. LINDSAY: We would make that representation.

MR. WORKMAN: What I just said, in effect, would also be a part of whatever report in the press comes out of this, which would set the stage for---this would reflect Committee agreement, anticipating the action by the Legislative members.

MR. WEST: All right. Is there any objection? It's unanimous.

MR. STOUDEMIRE: This means an article by article amendment to include germane sections of other articles

MR. WORKMAN: An article by article approach which would bring into one package---

MR. SINKLER: General subject matter.

MR. STOUDEMIRE: Not article by article approach, but substitute one article for the other, but to include germane sections of a different article.

MR. SINKLER: So long as it is related to one general subject matter.

MISS LEVERETTE: I think we can explore the wording, background of the California people. I think that would probably take care of it.

MR. WALSH: The point I wanted to make was that in relation to these items each member might have, as I understand what we've changed and I don't think we can really tell until we get this final draft. We are changing the county purpose doctrine of what a county can do. If we do that, I think it is essential that in addition to the debt provision that we put in, that we also put in a provision which would prohibit, say, a county, from installing a sewer system and I think counties must have that authority under our present situation and then turning around and taxing somebody that's already got a sewer system.

MR. SINKLER: I thought we agreed to that, Emmet. We agreed to it unanimously.

MR. WORKMAN: I think we've got one more question. That ought to be the continuing life of the Committee because I don't know where we stand with respect to running out of authority or running out of funds.

MR. LINDSAY: I think it's just going to have to be continued.

There being no further business the meeting was adjourned.

W. D. Workman, Jr.
Secretary

Nettie L. Bryan
Recording Secretary

MINUTES OF COMMITTEE MEETING

The Committee to Make a Study of the Constitution of South Carolina, 1895, met in the Senate Conference Room, Columbia, South Carolina at 2:30 p.m. on Wednesday, April 17, 1968.

The following members were present:

Senators-

Marion Smoak
John C. West, Lieutenant Governor

Representatives-

Brantley Harvey, Jr.

Governor's Appointees-

Sarah Leverette

Staff Consultant-

Robert H. Stoudemire

The Committee was called to order by the Chairman who gave a brief report of the status of the Constitutional Amendment revision. He called attention to the fact that it had passed the House without opposition and that a companion bill was reported out of the Senate Judiciary Committee with a majority unfavorable report. The Chairman stated that he had talked to the Chairman of the Judiciary Committee and had agreed that he would come before the Committee and explain in a little more detail what the Constitutional amendment involved. It was felt that with a more complete explanation, some of the opposition might be eliminated. It was agreed that the Committee should concentrate on getting the House passed Resolution out of the Senate Judiciary Committee and on to the calendar.

Mr. West then noted that each of the members of the Committee had been furnished a copy of the proposed Report of the Committee. He remarked that Mr. Stoudemire had done an excellent job and noted that the Staff Consultant, Mr. Workman and Miss Leverette had met frequently to work on the revised version of the Report.

Mr. Stoudemire stated that they had gone through and completed the Declaration of Rights, Elections and Suffrage, Corporations, and so on. He said that he had the Governor and the Legislative Articles just about ready and that Professors Bain and Abernathy are working on the Local Government and the Courts. He said that one of the most difficult, still to be done, is the Article on Finance.

Mr. Stoudemire said that he thought that the Committee was under obligation to make a report to this General Assembly and that he went on the premise that the Committee couldn't possibly get a full report done. He then proceeded to go through the Report.

Mr. Harvey wanted to know if the public hearings had been lined up and what groups would be appearing.

It was agreed that there would have to be some publicity about the public hearings and the Chairman noted that the Bar Association, Municipal Association, Association of School Boards, Chamber of Commerce, etc. would be interested in appearing at a public hearing.

It was also agreed that there would have to be a time limit on those persons wishing to appear and the Committee should ask them to prepare a resume.

The Staff Consultant then presented to the Committee a proposed time table with the finished draft, as a part of the Report, to be presented to the General Assembly in 1969.

The Chairman then asked for any changes or corrections and there being none, it was agreed that the Report would be printed and presented to the General Assembly on next Tuesday.

Mr. Stoudemire then read to the members of the Committee a proposed Concurrent Resolution to continue the Committee and that the expenses of the Committee not exceed $5,000.00 and that any funds remaining in the Committee's account be carried over into the next fiscal year.

The Chairman then thanked the Staff Consultant and commended him for doing a beautiful job for the Committee.

There being no further business the meeting adjourned at 3:15 p.m.

W. D. WORKMAN, Jr.
Secretary

Nettie L. Bryan
Recording Secretary

MINUTES

The Committee to Make a Study of the Constitution of South Carolina, 1895 met on Tuesday, November 19, 1968 at the State Board of Health, Columbia, South Carolina at 10:00 a.m.

The following members were present:

Senators-
John C. Lindsay
Richard W. Riley
John C. West, Chairman

Representatives-
J. Malcolm McLendon
Robert L. McFadden

Governor's Appointees-
Sarah Leverette
W. D. Workman, Jr.
T. Emmet Walsh
Huger Sinkler

Staff Consultant-
Robert L. Stoudemire

MR. LINDSAY: Let me ask you one or two things. One thing, the Executive Branch. "No person shall be elected to the office of Governor more than twice and no person who has held the office of Govenor, or acted as Governor, for more than two years of a term to which some other person was elected, shall be elected to the office of Governor more than once." Yet over here in your note you say, "Thus, no Governor may serve more than ten years." Why isn't that more than eight years?

MR. WORKMAN: If he serves eighteen months of somebody else's term, then he can run twice on his own. That's almost ten. Something short of ten. He can't quite make ten.

MR. LINDSAY: One other thing. In the Judicial Department. The only thing that I am concerned about as it directly concerns us. We are rather unique in Marlboro. We've got a constitutional county court. Only one in the State, I think. You're just getting ready to eliminate our County court.

MR. STOUDEMIRE: I think that was the intent of the Committee. To make anything below a Circuit Court to be established only by a general law.

CHAIRMAN: We checked the vote on the Constitutional Amendment allowing Article by Article revision. 154,399 to 98,603 against.

MR. WORKMAN: It carried, but we were running behind the other amendments.

CHAIRMAN: I asked that it be checked for that reason. Regional council of governments, 167,000 to 97,000. Receipts from liquors, 184,000 to 94,000. Additional grounds for divorce, 172,000 to 96,000.

MR. STOUDEMIRE: The question was longer.

MISS LEVERETTE: We didn't have as many voting on it either.

MR. WORKMAN: We were number four and it tapered off on the thing.

CHAIRMAN: It's good to be back and I want to say a special word of welcome to Bob McFadden and Nick Zeigler. They are two additions to our Committee. Just a brief word of explanation. We, of course, have been in this mill for a couple of years and a little over a year ago we started going through the existing Constitution determining what should be eliminated, modified or changed. Today sees the major fruition of those efforts. We have a first draft of what we think should be revised. I want to say publicly, as I've said privately, a word of thanks to Bill Workman, Sarah Leverette and Bob Stoudemire who have labored long and hard. The Committee went through the Constitution line by line and we made what we might term policy changes and then we turned over the problem of drafting the changes and putting them in acceptable verbiage to this sub-committee. They have worked regularly at least one evening a week and I want to say thank you to these three who have made perhaps one of the most substantial contributions to our work in the entire period of our Committee's existence. Just one or two general things. I had Mrs. Bryan get for us the results so far on the Constitutional amendment which will allow a revision by sections rather than submitting the whole matter. As of now, it appears that the Contitutional amendment which will allow us to present proposed Constitutional revisions at the general election in 1970 and 972 will have passed although the returns from Anderson, Charleston, Cherokee, Orangeburg and York are not in, the present vote is 154,399 for, 98,603 against. So, at some stage in our proceedings we are going to have to go back to the question we have by-passed, namely, a Constitutional Convention or a recommendation of a section by section or article by article revision. Bob, what is your idea on that question? Do you think it well to go ahead through the revised version that we have and then perhaps you and your group can get these various section by section revisions. Does any member have any comment or anthing of general interest to report?

MR. WORKMAN: I've got a matter of information. Dave Robinson as head of the Integrated Bar--he has named a committee of the Integrated Bar as opposed to the Bar Association to confer with us as necessary or to look into it, headed by Neville Holcombe. Have you talked with him?

MR. WALSH: I have talked with Neville. I told him that I would advise him of just what the status is and would ask this group to give an expression of how they could help us. Apparently it's a very good committee and they would like to assist.

CHAIRMAN: Our announced procedure has been that as soon as we produced a product that we thought we could recommend, we would then disseminate it to various interested groups for their consideration and ultimately have one or more public hearings. I think with respect to the Bar Association that their primary interest would be in the courts and the Judiciary system although not limited to that. We might well finish section by section and agree that this is going to be our final recommendation, we might send those sections on to the various committees or to the committee of the Bar Association and tell them that we ultimately expect to have a public hearing. In the meantime, if they see any major points that they wish to take issue with, please advise us.

MR. SINKLER: Wouldn't it be well to schedule a meeting with that group?

MR. STOUDEMIRE: Not unless you are going to open it up to every other group.

CHAIRMAN: Of course, we have many interested groups. The Municipal Association. I was contacted yesterday by the Association of Counties and they have a special committee. Bill Hodge is chairman of it and wants to be notified of any subsequent meetings. So, Bob, I agree that we can't give special consideration to any group, but I do think that the groups that have expressed an interest, we might do well to give them our work product as we get it in reasonably acceptable shape and then schedule public hearings.

MR. WALSH: I don't know to what extent they might help, but they've got a group of fine lawyers on there. If we could get some of that steam behind an effort, it could be a great help.

MR. STOUDEMIRE: I would see them as very useful--not necessarily coming before the Committee, but as readers.

MR. WALSH: Neville merely said that they wanted to help and that the next time we had a meeting to bring it to John's attention and that they would like to help in any way that they could. They felt that it was a very, very important undertaking in South Carolina.

MR. WORKMAN: Well, I think our procedural question is whether we make an effort to get them articles as we complete them or wait until the package is done. Let me suggest Mr. Chairman that we notify the various committees that we know to exist such as Neville Holcombe for the Integrated Bar, Bill Hodge and Bill Ouzts of where we stand at the moment, informally, and tell them that we appreciate their interest and we intend, as soon as the document is in such state that we can submit it to them for their review, that we propose to do so and ask their assistance in wording.

MR. STOUDEMIRE: I'll ask you legal members this. It might be well to submit this group the Court article in advance. I think that if this Integrated Bar group comes out and says that they stand behind this or they are against it, what would be the effect of this group on a Court

article going through. You see what I mean?

CHAIRMAN: I'll be very frank. If the Integrated Bar doesn't support it, we'll not get it through the Legislature.

MR. STOUDEMIRE: It might be well that we do pick out the Court article. The Municipal people have been here and they know what to expect on Local Government. My thinking would be that if there's a major thing in the Court article that these people are going to fight with, now's the time to find it out.

MR. LINDSAY: The article relating to the Judicial Department is going to stir up most of the controversy. I can sense that this might be controversial to say the least. If there were some Legislative Committee functioning to study what the uniform limitation of jurisdiction of a county court should be, but you're going to need-- in order to sell this section or this article, some proposed legislation creating a uniform system of inferior courts. Otherwise, you're asking somebody to buya pig in a poke. Are you going to use the Darlington standards, the Charleston standards, the Richland standards? I can see where that unless some consideration given to what is going to be the Legislative direction of jurisdiction for county courts, that we're going to have trouble selling this to every county that has a county court because every one of them has a different jurisdiction.

MR. WORKMAN: Well, as we get to the Jurisdictional section which is in the set today, as we complete that, if the Committee's agreed, that then arrange to transmit that to the Bar.

MR. LINDSAY: Why couldn't we ask this committee to concern themselves with a proposal which is allied to this, but not directly involved, and that is a recommendation for Legislative treatment, statutory enactment relating to inferior courts? Jurisdiction of county courts, in other words. They could be concerning themselves with that and, coming from them, would carry the weight of their Association. This is going to do away with every county court in South Carolina because none of them are going to be uniform.

MR. WORKMAN : We could make a specific request that if our Committee agrees on general content of the article on Judiciary, that we submit that to the Bar group with the request that if they concur with the general objectives of this, that we would like to enlist their aid-- not we so much, as we know that the Legislature would appreciate their aid which would go to the Judiciary Committees of the House and Senate, in drafting the necessary statutory material to implement what is put in the Constitution.

MR. LINDSAY: I'm thinking we could sell this a lot better if we had some recommendation from them as to what the uniform jurisdication of inferior courts is proposed to be.

CHAIRMAN: Jack, the question you raise is a very good one and rather basic. I can't recall specifically, but there are numerous other instances where we are eliminating things from the Constitution that

will require statutory enactments. Bob, that's a bridge we haven't crossed, really, but we ought to start giving it some consideration. It may be that we would want that one of your graduate students go through and note the areas that will require statutes.

MR. STOUDEMIRE: If these changes--your 1971 General Assembly would be the one that would meet all year. You can't do it before then regardless of what device you use, I don't think. If you use Convention, you can't vote on this until the next election. If you use amendments, you can't vote on it until 1970. If you use the article by article approach, the thing would have to be ratified in the '71 session.

MR. LINDSAY: Does the present Constitution permit statutory enactment of a uniform system of inferior courts?

CHAIRMAN: I think it's a good question to raise. I don't think we need to concern ourselves with it.

MR. STOUDEMIRE: "The General Assembly may also establish County Courts, Municipal Courts and such Courts in any or all of the Counties of this State inferior to Circuit Courts as may be deemed necessary, but none of such courts shall ever be invested with jurisdiction to try cases of murder, manslaughter, rape or attempt to rape..." Provided, however, that Orangeburg can do something differently and so forth.

CHAIRMAN: Let's go ahead, keeping that question in abeyance.

MR. LINDSAY: I would ask, Mr. Chairman, whether or not this wouldn't be a good field of inquiry for us to request this committee to look into.

CHAIRMAN: When we transmit the judicial section which we agreed shall be done as soon as this Committee agrees upon it, to the Integrated Bar Committee appointed to assist us--tell them that we would especially welcome their help in Legislative matters that might be required to effect a proper transition from the existing Constitution to a new Constitution.

MISS LEVERETTE: Bob, there is one section that I've heard objection to and that is the eminent domain, urban renewal business. A lot of people are opposed to it because they don't know what conditions or protections will be given if that is passed. Now, that type of thing is going to be difficult to do.

CHAIRMAN: Shall we start with the Preamble and go on? Unless someone has an objection, we will take the documents as prepared and simply go through them. I'll read the title and if you have any questions, we'll stop and discuss it.

MR. WORKMAN: As an indication which may save us time, where Bob Stoudemire has got under a section in parentheses--for example, Section 1, Article I, 1895, that, in almost every instance means that this virtually verbatim with what was in that section. In such instances

then you would have at the bottom, so and so revised or just, for example, new. So when you come to a citation that simply says, Section 1, Article I, 1895, that means that we are proposing to continue to keep it as it is. It may be shifted from one place to another, but the content is the same.

MR. SINKLER: May I ask a question on page 1? Section A. Didn't the Kentucky Court hold that that language permitted the substitution-- what did they have in Kentucky?

MR. STOUDEMIRE: They had a Convention based on the right of the people to come together. They have a Constitutional right to change the government.

MR. SINKLER: I just throw this out as a suggestion "as herein by this Constitution provided" so as to eliminate the Kentucky decision.

MR. WORKMAN: I don't think it's necessary, Huger. Not in our jurisdiction.

This was discussed fully and it was decided to leave it as drafted.

CHAIRMAN: On page 2. Any questions?

MR. STOUDEMIRE: You might remember that we left elections free and open as a democratic right and therefore we include that little bit as part of the Bill of Rights, rather than under Elections.

MR. LINDSAY; Section I. All courts shall be public. What does that do to hearings in chambers on criminal matters?

MR. WORKMAN: This does nothing because this is exactly what we've got now.

MR. LINDSAY: I understand that, but I'm questioning whether what we've got now is Constitutional.

MR. WORKMAN: What we've got is Constitutional, but what's being done with it is not.

MR. LINDSAY: Well, we've had an act of the Legislature that authorizes a judge to receive pleas of guilty in chambers and your chambers are not public.

MR. WORKMAN: And you've got juvenile courts all over South Carolina which are closed to the press and to the public which, in my view, is a clear violation of the Constitutional language that the courts will be open, so I think we ought to keep this as it is. Now, we've got to work it out either through mandamus or some other way to determine whether or not the courts are really going to be open, but I think the Constitutional principle that courts should be open should be kept.

CHAIRMAN: All right. Section J.

MR. STOUDEMIRE: Two new items here, gentlemen. First paragraph is the same.

CHAIRMAN: Secure from unreasonable invasions of privacy--shall not be violated.

MR. STOUDEMIRE: This is getting down to your mass computer data. It's getting to all electronic stuff. As you recall, gentlemen, we got into long discussions on this and decided that there was no way that we could find language to forsee what was going to be an unreasonable invasion in 1980 and the agreement of the Committee was that we would strike a general statement that people could rely on, rather than trying to itemize.

CHAIRMAN: This is sort of negative statement here. "The right of the people shall not be violated"--I can see your difficulty.

MR. STOUDEMIRE: The people shall be secure from unreasonable invasion of privacy period.

MR. WALSH: A good many cases have held that there are certain reasonable invasions of privacy, permissible where the public interest requires. This language is taken from several other constitutions.

MR. WORKMAN: In the proposed New York Constitution, they went to some detail in there to spell out under what terms electronic eavesdropping would be allowed on the presentation before a judge at a given level the reasons therefor and then he could permit the use of surveilance for a limited period of time, but rather than try to spell these things out, make general statements so that then in the statutory implementation of it they could say that use of electronic or eavesdropping or bugging would be permitted only under these circumstances.

CHAIRMAN: Anyone have any questions about this.

MR. STOUDEMIRE: The last paragraph is the wording Dan McLeod suggested to take care of these electrical, plumbing, etc. inspections.

MR. WORKMAN: Mr. McLendon has brought up what is a very valid point, Bob, that over in your explanation, your next to the last sentence, "This statement grants the General Assembly the power to issue warrants where a criminal situation is not involved". It grants the General Assembly the power to enact laws to provide for--

MR. McLENDON: The General Assembly can't issue warrants. Take out "to issue" and add "to enact laws to provide for the issuance of". Wouldn't that say what you're trying to say?

MR. STOUDEMIRE: Yes. Section K. Last sentence. Complete new philosophy. "The General Assembly may provide by law for the waiver

of an indictment by the accused."

CHAIRMAN: Section L. Section M.

MR. STOUDEMIRE: "Except as otherwise provided for in this Constitution... That puts you into your urban renewal thing which comes later.

MR. WORKMAN: This was put under the Bill of Rights because it does protect a right and then when you get to details of procedure for eminent domain and urban renewal, that goes in another section.

CHAIRMAN: Section N. Trial by Jury. Basically the same.

MR. WORKMAN: I think it would be well to point out, if my recollection is correct, that where we go to "Each juror must be a qualified elector... You remember there was some discussion as to whether or not the literacy qualifications should come in there and we are proposing in the requirements for registration and voting that the basis of the old requirement--that is, the inclusion of that minimum literacy test be put in there without respect to what the U. S. Supreme Court has done because we are temporarily under the Civil Rights Act statute which conceivably could be very soon lifted with respect to South Carolina. So this, by having the juror a qualified elector does, in effect, guarantee whatever degree of literacy is required for his voting. That is why we did not try to put in here anything relating to jury qualification.

CHAIRMAN: Section O.

MR. STOUDEMIRE: We brought two sections together.

CHAIRMAN: Change of Venue.

MR. STOUDEMIRE: Now, gentlemen, this is changed and I might talk about this briefly because the Committee actually left this sort of hanging fire. Remember this was over in the Jurisprudence section which we abolished. "The State shall have the same right to move for a change of venue that a defendant has for such offenses as the General Assembly may prescribe." One thing I did in here, I took out "moving to within the circuit" because I think you're going to soon have one county circuits.

CHAIRMAN: Any questions?

MR. WORKMAN: Bob, on that Change of Venue, that wording is a little off. I think we might take another look at that final wording without changing.

CHAIRMAN: Section O. Section R, Section S, Section T. Section U.

MR. WORKMAN; Bob, in Section U, the last sentence. "No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in the manner to be prescribed by law". I think we ought to take out the "to be", which would make us use what now is in the law, as well as what may be put in.

MR. WALSH: Going back to Section M. You might want to take out that "for" too. "Except as otherwise provided in this Constitution".

MR. STOUDEMIRE: Thank you, Emmet.

CHAIRMAN: Section V. Martial Law. Now we get to the Administrative procedure. Section W.

MR. STOUDEMIRE: This is new.

CHAIRMAN: This is a new one and we spent a session on it so I think we all ought to refresh our memory on it.

MR. McLENDON: When you say "bound", do you mean bound by its adjudication in a civil action or are there any quasi-judicial criminal boards?

MR. STOUDEMIRE: There are none, I don't think.

MR. LINDSAY: How about revocation of parole?

MR. SINKLER: Does the State furnish a lawyer with that last clause in there?

MR. STOUDEMIRE: I would say no. The Public Service Commission may have to have a man.

CHAIRMAN: Suppose that I have a client who wants a telephone and Southern Bell says that it isn't feasible, does this mean that the Public Service Commission has to give my client an engineer to make a survey?

MR. LINDSAY: I would say that's what "technical assistance" means.

MR. WALSH: Might be a good thing.

MR. McFADDEN: Preparing a defense.

MR. SINKLER: Is your language apt when you say, "nor shall be be subject to the same official..."

MR. STOUDEMIRE: All the commissions now are more important to a man's liberty or lack of liberty. I am not defending or anything else. The only thing I can say is that this is a new concept and you really don't have much to go on from any State as to what these words really do mean.

MR. McFADDEN: For example, doesn't the ABC Board both prosecute and adjudicate.

MR. LINDSAY: Also, you've got---I don't know whether you call it a prosecution except it's prosecuted at one level by a hearing officer for the Industrial Commission. Does that mean that this is what they've been after to get that hearing examiner where he can't sit on the

adjudication---

MR. WORKMAN: That would be the intent of this. The individual who participates and makes the finding on an initial inquiry is not then a member of the board which sits on in determining the correctness of this finding.

MR. LINDSAY: You've got a right far-reaching proposal here.

MR. RILEY: I question the use of the word "prosecution" on that, though.

MR. WORKMAN: The intent here is to give the individual citizen the safeguards before administrative bodies that he now has before judicial bodies. In some instances they simply don't exist.

CHAIRMAN: I think the thought here, Bob, is very worthwhile.

MR. SINKLER: You don't preserve the appeal in this thing. I don't know whether it's practical for some of our agencies to require that prosecution be on a different level. Take your ABC Boards. You're probably going to have them have to set up a defender for anybody they bring before them. I'm wondering whether that's wise. I think the first clause is definitely good. I think you perhaps would accomplish what you're after if you strike out the rest and insert in lieu thereof a built-in right of appeal to the courts.

CHAIRMAN: I think you've got a point there.

MR. McFADDEN: On an initial hearing, don't you, under our present statutory scheme, fix certain findings of fact which you immediately appeal to the court, rather than appeal to an intermediate body?

MR. WALSH: That's right.

MR. McFADDEN: I don't think we ought to do anything without careful consideration of what facts we might be fixing in some administrative hearing that could be changed on a review to an intermediate board prior to its appeal to the court.

MR. WALSH: One of the problems that we are trying to get to here is that, in many instances, a decision of an administrative agency cuts that fellow's neck off, so to speak, and he can have appeals as long as his arm and it's not going to protect him unless in the very initial instance, he has the basic rights of an adversary proceeding.

MISS LEVERETTE: Sometimes they never get any further than the administrative agency. You have the same situation in your magistrates courts where that's the only place a lot of people ever see justice or injustice, whatever it might be.

MR. WORKMAN: Could we devise language which would, in effect, equate a citizen's rights, procedural rights before a court with his procedural rights, safeguards, before an administrative body? Would it be moving

in the right direction to try to make his rights in the one area equivalent to his rights in the other?

MR. SINKLER: You have also got a lot of areas of government function and if you put this language in there about this--this second clause is the one which I find most objectionable, you really almost have a court case in every little level. I think the first sentence, really, protects. You get the right to be heard.

MR. McLENDON: Who would he be heard by?

MR. LINDSAY: I frankly think that any appeal from an administrative agency should stay the results of the administrative decision until adjudication on appeal, but I can see where the argument is against it.

CHAIRMAN: How about this? Take Huger's suggestion down to the point, keeping the first language, "opportunity to be heard",delete "nor shall he be subject to the same official for both prosecution and adjudication" leaving in the next section, "nor shall he be deprived of liberty or property unless by a prescribed mode of procedure" and adding as a final sentence "and he shall, in all instances, have the right of judicial review.

MR. SINKLER: Very good.

MISS LEVERETTE: There is an objection to that, I don't know how valid it is, in this working paper that"judicial review might stand as an open invitation to seek judicial review of unfavorable administrative decisions and attorneys might tend to feel their duty to their clients would demand they almost automatically would prosecute and appeal to the court. This would result in inordinate delays in carrying out normal administrative functions." They point out here that in certain instances--there's a second section in this Kentucky proposed provision on judicial review, more than what we have.

CHAIRMAN: I'm thinking that the Legislature then could be free, as they are now, prescribe conditions for appeal such as the giving of bond for a stay.

MISS LEVERETTE: Which would take care of that.

CHAIRMAN: Which would take care of it, but still, I am concerned because occasionally you get a power hungry fellow. I think there ought to be some basic right of going through the court system with some reasonable review.

MR. WALSH: I think the fact that it's here will have a very helpful effect and therefore eliminate a lot of your problems.

MISS LEVERETTE: This refers to judicial or quasi-judicial decisions and not those strictly on an administrative level.

MR. WORKMAN: There is a weakness in the clause which says "nor shall he be deprived of liberty or property unless by a prescribed mode of procedure". The weakness there is, who prescribes it because the regulatory agency itself may prescribe a mode of procedure which is

essentially unfair on the face of it.

MR. WALSH: What about saying "by the General Assembly" and then that would almost require the General Assembly to adopt some sort of administrative procedure similar to the federal government.

MR. STOUDEMIRE: I see three alternatives here. One is, leave it like it is. Second, to accept some change. Third, amend it, but see what a public hearing does. I have a hunch that if we have a hearing on the Bill of Rights that someone is going to speak to this thing.

CHAIRMAN: Without disparaging those who would come to the public hearing, I doubt that they would have given it the thought that you have or be as skilled in verbiage.

MR. STOUDEMIRE: We need to re-word it.

MR. RILEY: John, this would be an area, also, that Bar group could help with.

CHAIRMAN; I think we all agreed that its a necessary and a very fine addition to the Constitution to have it. I think we generally agree that the lawyer view is that "nor shall he be subject to the same official for both prosecution and adjudication" is without really any meaning. There are terms there that really don't have the meaning that perhaps we want them to have.

MR. McLENDON: Well, you have an administrative expert in Nick Zeigler. He ought to be a source of good help.

CHAIRMAN: We'll take the easy way out and assign this to Senator Zeigler to give us some suggestions.

MR. STOUDEMIRE: The decision now is that you want it re-worked, trying to find some way around the same official for both prosecution and adjudication. And the rest of it is generally o.k.

CHAIRMAN: I don't know about that. When you say"technical assistance"--...when we get into an adversary proceeding with a Constitutional mandate to provide technical assistance, there's just no end to it.

MR. SINKLER: My motion is that we strike out "nor shall he be subject to the same official..." and the other clause "nor shall he be denied the benefit of technical assistance...", rework the third clause, "nor shall he be deprived of liberty or property..." and add to it a judicial review.

MR. WORKMAN: Shall we not also include within that "unless by mode of procedure prescribed by the General Assembly", then the General Assembly, itself, will have to address itself to the problem of how much, if any, assistance is entitled to.

MR. STOUDEMIRE: They can't make all these rules.

MISS LEVERETTE: We're talking about the procedural.

MR. WALSH: We are talking about a procedure when a person is heard before one of those agencies. A lot of them have not set up any procedure. You're really in the dark when you go before them.

MR. WORKMAN: I think that we are going to have to work on this some with Nick. I think the intent of the group is pretty clear on the thing. I haven't come across any Constitutions that include this type of proviso.

MISS LEVERETTE: The Administrative Act under the federal government--there are just certain basic things that that sets out so that it would protect people.

MR. STOUDEMIRE: Mr. Chairman, Mr. Sinkler made a motion here on three ideas. He brought up the idea--the concensus on taking out this "both prosecution and adjudication" clause and the other idea was the "technical assistance" be deleted and then you add the concept of judicial review. Is that the consensus of the Committee or not?

MR. WORKMAN: My feeling was that with respect to prosecution and adjudication, that the quarrel more was with the language than with the intent. My intent would be that individuals who are authoritative in initial findings should not then sit in on the review of findings which they, themselves made. I think that ought to be corrected. Now whether the term "prosecution and adjudication" is correct, I don't know.

MR. McFADDEN: Let me ask you this. Isn't this an area--this thing you're talking about--isn't this an area where the General Assembly could act now without a Constitutional prohibition involved.

MR. WORKMAN: It could, but nothing's to safeguard the right of the individual in the absence of statutory action. We're still in the Bill of Rights. We're trying to tell the individual that you have these safeguards.

MR. McFADDEN: Aren't we attempting to do now what we criticize in our Constitution of 1895 and that is to write in a provision in the basic Constitutional language that we could take care of simply by General Assembly action.

MR. WORKMAN: But we've got to mandate the General Assembly to do that. They have just now gotten around, if they have, indeed, to correcting the situation with respect to the Industrial Commission. They did it by adding a Commissioner. The intent here is to put in in the Bill of Rights the Constitutional safeguard which tells the individual citizen that when you are hauled before an administrative agency that you've got rights commensurate with when you are hauled before a judicial agency. The Legislature will spell out how this is done.

MR. McFADDEN: When we talk about the right of appeal to the court in any judicial or quasi-judicial decision, where are we on the parole board?

MR. McLENDON: Quasi-judicial.

MR. STOUDEMIRE: I have been thinking along the same lines as Mr. McFadden. Can we get out of this thing by accepting down through "an opportunity to be heard" and then come back with a mandate that fair procedures for appeal or something of this nature.

MR. RILEY: I wonder if the language "except on due notice and an opportunity to be heard"--is that clear enough as far as concluding a matter on an administrative level. I question somewhat whether that is clear enough.

CHAIRMAN: I think you've got to have a hearing. He's not bound until he has an opportunity to be heard.

MR. SINKLER: Carrying your thought one step further--don't we want the General Assembly to prescribe the type of notice--don't we really want to say that "the General Assembly shall prescribe the form of notice"...

CHAIRMAN: I don't know whether you want to say to a board that they have to give them ten days notice. I think due notice would cover that.

MR. WORKMAN: What we are doing in effect in the Constitution is telling the General Assembly to concern itself with the protection of individuals who appear before administrative agencies. By simply doing that, if the General Assembly does the job of which it is capable the problem will be solved. If it's not solved, the fact that the General Assembly is mandated in this gives an individual the right to into court and say that the General Assembly is not giving me the Constitutional safeguards. It gives them a standing in court which he does not have.

CHAIRMAN: What about "nor shall he be deprived of life or property unless by a prescribed mode of equitable procedure". Does that have the element of fairness?

(Break)

Before we get back into the administrative procedure, Bob wanted us to suggest another meeting date.

MR. STOUDEMIRE: Gentlemen, I have Local Government ready to ride. Finance Section is ready to ride, Elections, Militia, Impeachment and Legislative is being typed this morning.

MR. WORKMAN: These are areas that are not on today's agenda.

(After discussion, it was agreed that the next meeting of the Committee would be held at 9:30 a.m. on Thursday, December 19, 1968, and would last all day.)

CHAIRMAN: We are still on Section W.

MR. STOUDEMIRE: I would suggest that we mail that out as an individual thing. Really, this is the first time that the full Committee has seen this.

CHAIRMAN: In sending your draft out, let's send a special note to Nick Zeigler. All right, Section X. That is basically the same.

MR. STOUDEMIRE: I have a policy inquiry here. We did include some things here to make sure that we didn't overlook---should we put down things we discussed, but didn't adopt.

CHAIRMAN: I think it's real helpful to do just what you've done here, but I think when we get the final draft for publication and somebody comes in and says, "why didn't you do that", we can say that we have here in our Committee proceedings the fact that we considered it.

MR. WALSH: I think on the right, that this is very good because somebody studying would know what happened.

MR. STOUDEMIRE: I think we have an obligation to do that.

MR. WORKMAN: We are talking about on the last page here whether or not to include material such as in the left paragraph of items considered but not included. The value it would serve would be to perhaps suppress unnecessary discussion from people who send in on hearings, but I don't know that it's necessary to print that. It would be part of our rationale if it is challenged that we would explain that we have been into these things, but determined that they weren't necessary to be included.

MR. SINKLER: In the final draft, are we going to use Sections A, B, and so forth?

MR. STOUDEMIRE: I would think that we would. At a public hearing a man could talk about A. If he talks about 1, then we're going to get confused as to whether he is talking about new 1 or old 1. To the General Assembly now, we keep this format and go back to the 1, 2, 3, but not before then.

CHAIRMAN: All right. Functions of Government.

MR. STOUDEMIRE: Let me refresh your memory. This takes in all the old things about prisons and the Mental Health Commission--all that type of thing. This new substitute provision is modeled somewhat on the Kentucky draft. Really all you're doing here is someone saying that you are concerned, and that you want the General Assembly to act.

CHAIRMAN: I like the tone in the Section on penal institutions giving a mandate for custody, maintenance, health, welfare, education and rehabilitation. Any questions on functions of government? Corporations.

MR. STOUDEMIRE: Again, we based it on the Kentucky concept, I think.

MR. WORKMAN: My memory is not precise on this, but I recall Dave Robinson telling me at one time that there was something in the South Carolina Constitution which related to the voting rights of stockholders. Is that absorbed up in this? This would cover it.

MR. SINKLER: We have a very good Corporation Law.

CHAIRMAN: Public education.

MR. STOUDEMIRE: I would like for all of you to read Section A. Bill, Sarah and I had trouble wording it. (Read Section A).

MR. SINKLER: Of course, if we lose a congressman, we get down to five and that cuts your Board down.

MR. WORKMAN: We contemplated that because initially we had put in there that the "Board of Education of nine members" and then we determined that in order to not have to go back to the Constitution in the event of reapportionment that we would not refer to the number of the Board, but we'd say the Governor would have three and then one from each Congressional District. If we gain one, it gives us a ten man Board. If we lose one, it drops it down to eight. As it is now, it will be a nine man Board on which the Governor would have three appointees.

MR. SINKLER: Is it desirable to have an eight man or a ten man Board where you would have no majority?

MR. WORKMAN: No, it's not. Our growth has been pretty consistent--just enough to keep it. A lot of shifts nationally, but our's is pretty consistent. The ratio would vary if we gained or lost, but by the wording it has now it would not be necessary to go back into the Constitution. You wanted to come out with an odd number, though. More important, perhaps, than having simply the odd number is to have what we consider to be the proper mix of Governor's appointees with respect to Legislative appointees. The Governor with three out of either eight, nine or ten is a pretty good balance because his influence can be felt, but he can't control. So, the only real disadvantage is coming out with perhaps a standoff of 4-4 or 5-5.

MR. SINKLER: I think we all agree that we want the Governor to have a third.

CHAIRMAN: Actually, I don't fear a standoff too much. It's a real rare thing, plus the fact that you have vacancies coming up and the Legislature electing or the Governor appointing that would break it.

MR. WALSH: I agree with you, John. It's seldom that they would have to pass on something that would hold up everything.

MR. STOUDEMIRE: The easy way is to leave it like it is. We will know the 1970 census before this actually becomes a fact and if we see

by the '70 census that we are in hot water, then we can make some type of change in here to recognize Huger's point.

MR. WORKMAN: Let's do that then. Let's keep it as it is and adjust it if necessary.

CHAIRMAN: Just to remind you on Section B, we recommend that the Superintendent of Education be appointed rather than selected publicly.

MR. STOUDEMIRE: And qualifications are established by law.

MR. RILEY: Should we use the word "appointed" rather than "selected"?

MR. WORKMAN: I think there is some little semantic difference.

CHAIRMAN: "Appointed by the State Board of Education".

MR. STOUDEMIRE: Gentlemen, Section C now. We have it listed here as a new provision because the free public school thing was taken out, so, in effect, it reverts back to the old, long-standing rule, but nevertheless you have to say new because it was taken out.

MR. WORKMAN: The language is not coincident with that which was originally in there either.

MR. SINKLER: What do we say about the establishment of school districts? Do we have that anywhere in the Constitution at all?

MR. McLENDON: We've taken it out. Left it back with the Legislature.

MR. WORKMAN: Section 5 has been deleted---school district size has just been left up to the General Assembly.

CHAIRMAN: Any question on C? Let's take D.

MR. STOUDEMIRE: D is the same one except we took out the word "indirect". You see, you couldn't use State money for indirect or direct benefits. Now, as the discussions coming out of the anti-Moody Report, I'm sure that this is going to be one that the private schools or colleges are going to speak to. My memory is that we said take out the word "indirect" therefore this would lead the way where the State could held the student, but not P.C. or Newberry.

MR. SINKLER: I think the deletion of "indirect" is quite helpful there.

CHAIRMAN: We certainly don't want to put anything into the Constitution that would prohibit some reasonable support.

MR. WALSH: This, probably, is a good compromise.

CHAIRMAN: Then we go to the final page where the deleted sections are noted.

MR. STOUDEMIRE: The one here now is 12, Mr. Chairman, which goes against the recent Constitutional amendment on earmarking the liquor revenue.

Our position was, take it out of the Constitution and let the Legislature allocate the funds. The important here is that this has nothing to do with being wet or dry. That is another section.

CHAIRMAN: Any questions about that.

MR. WORKMAN: That is going to be subject to some attack.

CHAIRMAN: All right. Let's go to Eminent Domain.

MR. STOUDEMIRE: Gentlemen, as you recall, we had boundaries of rivers and navigable waters and all that in two or three different sections of the Constitution. This is, in essence, the same as one of the sections.

MR. RILEY: Before you leave Section 12. Was that where this amendment we passed came in? Would it be eliminated along with it?

MR. WALSH; The only reason they had to have this amendment was because we had another amendment.

MR. STOUDEMIRE: As you know, all amendments approved this time have to be ratified by the General Assembly. I will need to keep abreast of what they ratify and in some cases we can put that in there and if the next case hasn't been ratified when we go to press, then there's nothing you can do except just put a note.

MR. RILEY: I think I would put a note that it passed by a vote of the people.

MR. WORKMAN: The elimination of this Section 12 would remove the necessity for the amendment that we just adopted.

MR. SINKLER: I think you would say that we are simply implementing the apparent will of the people.

MR. STOUDEMIRE: I would note them either way. That they are already ratified or it's pending because otherwise we could run into some trouble.

CHAIRMAN: Eminent Domain. Section A is basically the same.

MR. STOUDEMIRE: To refresh your memory, there is one feeling that A, B and C are really not needed, but I think the Attorney General has some misgivings that if we took them out it may be interpreted that we did mean a change of policy.

CHAIRMAN: Any question on A,B, and C? Then we get over to D.

MR. WORKMAN: I think you mean "disposing" instead of "deposing". The second sentence under public lands. "Nor shall such land be sold to corporations or associations for less than fair market value". Why the omission of individuals or could we just say "nor shall such land be sold for less than fair market value"?

MR. SINKLER: The Attorney General has ruled that this provision, that the State can donate land to a public corporation and if you followed your language precisely then the State couldn't do it. They would have to sell it. That's why that thing is limited to--I think you need the word "private" before corporations in the second sentence.

MISS LEVERETTE: "Private" is in the first sentence, but not the second.

MR. STOUDEMIRE: Now, the original is "nor shall such land be sold to a corporation, association or railroad for less than". They can be sold to individuals and we've changed that "for less than fair market value".

MR. SINKLER: Of course, the second sentence has never been implemented. There is no standard as to what an individual would pay for it. Fair market value is probably better.

MR. McLENDON: We passed an act in the Legislature allowing the State to swap a piece of land.

MR. STOUDEMIRE: This wouldn't interfere.

MR. SINKLER: You get into all sort of questions there. If the State's got any title one way or the other it's going to be covered by this particular section. They may have property rights or easements or something of that sort. And the relocation of highways.

MR. STOUDEMIRE: Maybe you're right, Huger. "Nor such land shall be sold to private corporations or associations for less than fair market value".

MR. WORKMAN: Again we come back to why the omission of individuals?

MR. STOUDEMIRE: Point well taken.

MR. WORKMAN: This is necessarily going to have to be done because we've got up here by SLED Headquarters some land and I can visualize the desirability of the State's possibly selling off to real estate developers, either as individuals or as corporations, chunks of that land to raise money towards building of a new penitentiary or for the acquisition of other land to be used for the same purpose. I think we've got to look to the possibility of State lands being disposed of to corporations, to associations and/or individuals.

MR. STOUDEMIRE: Gentlemen, we probably had individuals in there to start with because something's been dropped.

MR. SINKLER: Shouldn't the matter of public lands be regulated by the General Assembly?

CHAIRMAN: We could shorten it by leaving the first sentence and simply adding "or sold for less than fair market value". There's no prohibition

against giving it to public corporations.

MR. RILEY: That's good.

MR. WORKMAN: Huger's suggestion that in addition to the word "sold" "or exchanged" because these changes do crop up from time to time.

MR. STOUDEMIRE: "Nor sold or exchanged". One other thing, the old history here has the word "associations". "to private corporations, associations"--should we insert that in there, too?

MR. RILEY: We don't have to say "private" associations, do we?

MR. McLENDON: The last sentence is superfluous, isn't it?

CHAIRMAN: I would be inclined to think that it should be there.

MR. STOUDEMIRE: Dan would want to leave it in there.

MR. WORKMAN: Let's go to this next one.

MR. STOUDEMIRE: Gentlemen, I take care of Spartanburg in the last sentence. "Any political subdivision possessing the powers granted in this section" (I reckon that's as close as I can get) "by prior constitutional provisions may continue to exercise such authority".

CHAIRMAN: Bob, explain to me why this is necessary because if this passes, they have the power and if it doesn't pass it still has it.

MR. SINKLER: Let's consider the first phrase "may provide by law". That imports future action which is what we want to avoid.

MR. STOUDEMIRE: That's a point well taken.

MR. McFADDEN: Do I understand this to preserve the present Constitutional amendment that York has, including the right in the event of resale for the original owner to have the first option to re-purchase?

MR. WORKMAN: Doesn't affect what you now have.

MR. SINKLER: Probably better leave this the way he has it.

MR. STOUDEMIRE: I would leave it because we can't forsee the future. It may be '76 before they get around to it and by that time you may have four or five more than what you have now. Gentlemen, the Judicial thing. The word "may" has been left out about seven or eight lines down. Should be "may be established".

(Break for lunch)

CHAIRMAN: We are down to the Judicial Department.

MR. STOUDEMIRE: I suppose there are more changes in this one than in any of the others that we have come upon. Now I may call your attention to some language here that's going to be different from language when we get over into the Finance."..and such inferior courts of uniform limited jurisdiction as may from time to time be established by general law" which I interpret to mean that you could have population class laws and we've got the property tax so worded "by general law". We've got a clincher in there, though. It has got to be one thing throughout the State.

CHAIRMAN: Actually, I think it's pretty good. I think the explanation is excellent.

MR. SINKLER: How about that last sentence?"..shall not include those limited"---

MISS LEVERETTE: Aren't you saying"the unified court system shall not include limited courts" of this nature.

MR. STOUDEMIRE" "Courts" would be better than"those".

MR. SINKLER: Why don't you add an explanatory sentence to the next to the last sentence to say "shall not be mandatory that they do come under"--isn't that the thought we want to express.

MR. STOUDEMIRE: All right.

CHAIRMAN: Section B.

MR. McLENDON: John, could we go back and look at Section E under this Eminent Domain. Remember we were discussing that last sentence where you say "Any political subdivision possessing the powers granted in this section by prior constitutional provisions may continue to exercise such authority." That's going to give some problems to York and Spartanburg because it says there "...possessing the powers granted in this section...". Their acts may have in them more powers than you are granting here in this Constitution.

MR. STOUDEMIRE: Let me analyze what they have and compare it and if necessary--I'm going on the basis that these areas want to be sure that they keep what they have.

MR. WALSH: What the idea is is that we will have the power vested by those acts which were enacted.

CHAIRMAN: You want a grandfather clause.

MR. SINKLER: But you don't want to have your hands tied by having a court hold that those acts are part of the Constitutional grant.

MR. STOUDEMIRE: I say your acts are Constitutional because you have the Constitutional authority.

MR. SINKLER: I know what you're after, but you might get yourself in trouble by confining yourselves to existing law.

MR. WALSH: That needs some reworking.

MR. STOUDEMIRE: What I am trying to avoid is mentioning the amendments specifically and we might have to.

MR. WORKMAN: Couldn't you hedge it by saying "Any political subdivision possessing the general powers granted in this section...".

MR. SINKLER: Why don't you just say, "political subdivisions possessing powers heretofore granted by special Constitutional amendment may continue to exercise the authority given to them by existing law until subsequently changed". The Legislature may want to change the law. They certainly ought to have the right to change those laws.

MR. WORKMAN: In rewording, we said "Any political subdivision possessing slum clearance powers heretofore granted by Constitutional provisions may continue to exercise such authority".

MR. SINKLER: But you don't want to let them continue to do it forever. You might want to repeal them. You don't want to have a statute on the books that can't be amended.

MR. WORKMAN: If it says "may" then they can change it any time they want. It makes it discretionary to keep what they've got or to alter it.

MR. SINKLER: I think the word "may" is tantamount to shall be empowered to continue.

MR. STOUDEMIRE: What I was going on was to make sure that we did not set aside the special Constitutional amendments. If you don't set aside the amendments, I was reasoning then that any laws enacted under them would still stay or they could be changed.

MR. WALSH: It may be that we ought to put a grandfather clause in another location to take care of this.

MR. WORKMAN : If we do that, then it's going to be right hazardous that we don't perpetuate some things that we want to correct--for example, in the area of courts. We want to get uniformity in county courts and things of that sort. We could put something in here to the effect that nothing herein shall be construed to invalidate Constitutional grants of slum clearance powers heretofore granted.

CHAIRMAN: If this revision fails on a section by section thing, you have what you've got. If it passes, then the question is does the existing acts either expand or limit it. I don't believe the existing provisions are any broader than these.

MR. STOUDEMIRE: I disagree with all of your reasons. If you protect the amendment, that's all you need to do because the Legislature can go out tomorrow and repeal York County's law and so can they repeal

Spartanburg's. They can't repeal the Constitutional grant.

MISS LEVERETTE: If it's unconstitutional, it would be under the present Constitution.

MR. SINKLER: It seems to me we ought not to have urban law different in part of the State than from another.

MR. McFADDEN: But it's already different.

MR. STOUDEMIRE: We don't think the General Assembly, at the moment, is going to pass a slum clearance thing for every town and this thing says "the General Assembly may provide" and we're passing the buck so that we can open the door without future Constitutional amendments.

MR. McLENDON: Let's pass all of this and let Bob edit it out.

MR. STOUDEMIRE: Rather than let them lose it, I would suggest that we just go on and name the areas and be done with it rather than try to upset, because it would be a terrible waste of public funds to have all that stuff set aside at some time.

CHAIRMAN: All right. We're on page 2 of the Supreme Court. Any questions on the page?

MR. WORKMAN: I think what the revision is, Bob, is the joint public vote.

MR. STOUDEMIRE: "A majority of the Committee feels that the current method of election should be continued, however several members favored a system whereby a nominating committee would make recommendations". Now that is the way that they agreed to express their minority report.

MR. WORKMAN: I would say nominating agency rather than committee.

MR. STOUDEMIRE: There are going to be a few other places where my notes show that it wasn't unanimous.

CHAIRMAN: Section D.

MR. STOUDEMIRE: Section D is a new section now.

MR. SINKLER: "Subject to the laws of the General Assembly".

MR. McLENDON: It's not a law until the Governor signs it.

MR. STOUDEMIRE: I think "subject to law" comma.

CHAIRMAN: All right. Section E.

MR. McLENDON: What is this? "And said Court shall have appellate jurisdiction only in cases of equity,..." Where does that come from?

MR. STOUDEMIRE: I think it comes from Article 5. Directly from 1895.

MR. RILEY: I think you are emphasizing the wrong word. I think that means it only has original jurisdiction in cases of law and that's not to say that it doesn't have appellate jurisdiction in cases of law, too.

MR. WORKMAN: "Only" ought to go before "appellate".

MR. STOUDEMIRE: Gentlemen, it is word for word.

CHAIRMAN: I think it's agreed that if we switch "only" prior to "appellate" that would answer all the questions.

MR. STOUDEMIRE: All right. Section F. We just took out the four year term and substituted "at the pleasure".

MR. McLENDON; The first Article simple left the Magistrates out.

MR. RILEY: How about the fact that the Governor appoints them.

MR. STOUDEMIRE: That could still be done by law.

MR. RILEY: That could be changed by general law.

MR. STOUDEMIRE: Section G combines the-- there used to be a separate section on civil, a separate section on criminal and this wording has both put together. Otherwise, there are no drastic changes.

MR. WORKMAN: We have some changes in the probate functions. What was it Bob?

MR. STOUDEMIRE: If you say Probate Court--the old Constitution calls it Probate Court and doesn't say a thing about Probate Court. This is one of these things that you leave in because it may cause a hornet's nest if you take it out. I don't think it does a thing that the General Assembly couldn't do, though. It is the old wording only I just changed the introduction.

MR. McFADDEN: This one we're under now, is that where we used to have general session court, having exclusive jurisdiction of murder, rape, perjury and so forth? G.

MISS LEVERETTE: That's in Article V, Section 1.

MR. STOUDEMIRE: "But none of such courts shall ever be invested with jurisdiction to try cases of murder, manslaughter, rape or attempt to rape..." and so on

MR. McLENDON: That's an exclusion for inferior courts.

MR. STOUDEMIRE: That's right. You can create them, but--

MR. McFADDEN: That has been left out of this draft, is that right?

MR. McLENDON: Section G gives that jurisdication to the circuit court.

MR. WORKMAN: But it does not prevent the General Assembly giving the same jurisdiction to some other.

MR. STOUDEMIRE: That's been left out. You're correct.

CHAIRMAN: Any questions on Probate Functions?

MR. STOUDEMIRE: Section I.

CHAIRMAN: If you recall, we have five roving circuit judges.

MR. SINKLER: Jumped the term from four to six years.

MR. STOUDEMIRE: You will note that the regular circuit judges must live in the circuit whereas the roving judges can live anywhere in the State.

CHAIRMAN: I think giving the additional five judges and giving the Chief Justice the right to give you a judge will solve some of the problems.

MR. WORKMAN: They can use those five to clean up the backlog.

MR. McFADDEN: Bob commented briefly on this provision that the General Assembly shall by law divide the State into sixteen judicial circuits with reasonably equal volume of judicial business. Is it contemplated that the General Assembly will, in fact, do this? Are they going to do it on some periodic basis?

MR. STOUDEMIRE: All we're doing here is saying that the General Assembly ought to evaluate the circuits, based on business. I think it could do this every two years, every five years.

MR. McFADDEN; As a practical matter, they don't have to do it at all.

MISS LEVERETTE: We put that sixteen in there.

CHAIRMAN; All right, we'll go on to J.

MR. STOUDERMIRE: That's worded so that the sixteen-=-circuit judges have to circulate, but not the roving.

CHAIRMAN: Section K. Same except we make all the judges have to practice five years and be twenty-six years of age.

MR. WALSH: Did we take out here this thing about increasing compensation?

MR. STOUDEMIRE: Yes, we did.

MR. WORKMAN: It allows it to be increased during the term of office, but not be decreased which is kind of a one way ethical barrier.

MR. STOUDEMIRE: It's my temporary ruling that these things about dual office holding and not being part of a party and so on really should be here as part of the Court article and not in a special thing on offices. It is so related that it fits better here than it does in another article.

MR. WORKMAN: In connection with dual office holding with respect to the Governor and others, we have put an exclusion there "excepting militia". Now, should that be done with respect to the judges?

MR. STOUDEMIRE: I would say here that we probably should say "except the militia" for judges.

CHAIRMAN: Two points that we say a judge cannot hold office in a political party or run for office without forfeiting his position. I think it's a good idea.

MR. WORKMAN: The question there is at what point in time does a man become a candidate? Does he resign when he announces or files?

CHAIRMAN: He becomes a candidate when he files.

MR. STOUDEMIRE: Are we agreed on L then? M is a new section, gentlemen.

CHAIRMAN: I think that's a good section.

MR. STOUDEMIRE: You still can impeach.

MR. SINKLER: Why do you need the last sentence?

MR. WORKMAN: We had just earlier said that the court could make such rules and regulations, under law. This sort of establishes their right to do it in this area.

MR. STOUDEMIRE: The Supreme Court would do it by rule and not depend on law, I think.

MR. RILEY: On N, is "executive appointment" better language than "by the Governor".

MR. STOUDEMIRE: "...by the Governor" and that takes care of it.

MR. WORKMAN: "...appointment by the Governor".

MR. STOUDEMIRE: We made that broader. Section O.

MISS LEVERETTE: In that third line, "shall have the same powers" rather than "power".

MR. STOUDEMIRE: I will revise it.

MR. McLENDON: What is required to be determined by public trial? Why is that last phrase necessary?

MR. WORKMAN: I can remember the intent of it because I think I brought it up. It was to prevent judges from disposing of matters in the privacy of proceedings in chambers when such matters were properly--required trials which shall be public.

MR. SINKLER: I don't think you ought to put that in there.

MR. WORKMAN: This seeks to prevent the granting judges the power to handle matters in chambers which, under our general concept of public trial, ordinarily would be handled in public.

MR. SINKLER: I don't know what they are.

MR. STOUDEMIRE: But that would give me a right to protest if he is doing something in chambers that he's got no business doing.

MR. McLENDON: That isn't what this says, Bob. You can always protest what the judge does to you at chambers by appealing.

MR. WORKMAN: I'm not interested in what the judge does within chambers that is acceptable to the parties concerned, but there are certain things in the conduct of public trials in which the public has a legitimate interest.

MISS LEVERETTE: You can strike "required by the Constitution" and say "except in matters to be determined in a public trial".

MR. SINKLER: What is to be determined in a public trial?

MISS LEVERETTE: Well, that would be a question of your procedure. If you strike out "required by this Constitution"---

MR. McLENDON: I don't think Bill's fear is justified.

MR. SINKLER: Bill, you don't want that judge running off and having a little private session with those accused. What you have done, however, is to cast doubt on any judicial act that is not done in open court.

MR. STOUDEMIRE: Gentlemen, I see the difference here now. If we take off this last "except" then we need to revert back to the old Constitution, whereby they are limited now. "...judges shall have the same powers at chambers" to issue these writs, you see. Then, second,"the judges of circuit courts shall have such powers at chambers as the General Assembly may provide". Change the language. Take out all these writs. "... shall have the powers at chambers as when in open court" and this last thing, I think, is a restriction saying that he doesn't have unlimited power and it may be wise to go back to the old language.

MR. McLENDON: I think it would. This is going to create great problems.

MR. WORKMAN: How does it read now?

MR. SINKLER: "Each of the Justices of the Supreme Court and Judges of the Circuit Court shall have the same power at chambers to issue writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and

interlocutory writs or orders of injunction as when in open Court. The Judges of the Circuit Courts shall have such powers at chambers as the General Assembly may provide." Should be "also have such powers.."

MR. STOUDEMIRE: By issuing special things, then the General Assembly can regulate. Better than this thing here if you keep the last phrase.

MR. WORKMAN: Looks better to revert to the original language in which case you would then rely on the General Assembly to be the watchdog.

MR. STOUDEMIRE: Huger made a point. "Judges of the Circuit Court shall also have" or "shall have such additional powers"

MR. RILEY: "..such other powers".

MR. STOUDEMIRE: Mr. Chairman, are we reverting to Section 25?

MR. WORKMAN : Will that, in essence, be 25 as now written plus the words "all other courts of record".

MR. SINKLER: You would have to do that.

CHAIRMAN: Section P.

MR. SINKLER: That's a good thing.

MR. WORKMAN: This is indicative of those areas in which some rather effective education has to be done to show that the jobs themselves are not threatened by the failure to refer to them in the Constitution. Let the Legislature determine whether they will exist and under what conditions.

MR. RILEY: Bob, do you think in the last line of that do you think we ought to put the word "criminal" before "cases"?

MR. STOUDEMIRE: Yes.

CHAIRMAN: Section O. Publication of Decisions. Everybody agrees.

MR. STOUDEMIRE: Now, we decided everything about the jury ought to go to Bill of Rights. Now the Attorney General, his election we put into the Executive, but we thought that his responsibility over solicitors ought to be part of the Courts, you see, and then the deletions.

MR. WORKMAN: This has the effect of considerably shortening this Article, doesn't it.

MR. McLENDON: Are you going to get a little kickback on Section 26 allowing the judges to charge on the facts.

CHAIRMAN: I doubt it, Mike.

MR. STOUDEMIRE: Leave it to the General Assembly the power to fix the regulations on charges to the jury. You could take care of it that way.

CHAIRMAN: Any other questions?

(Break)

MR. STOUDEMIRE: I do want to call your attention down here to Section B. The way we interpret this thing on dual office holding--the old standard procedure--some people think that this would prevent the Governor from holding any type of federal appointment. What if you took out "or any other power".

MR. SINKLER: I don't know if we would want our Governor running off on a federal job.

MR. STOUDEMIRE: If we get in the mainline of things and if South Carlina's Governor is really the best man to take a federal appointment for a week to talk with the Russians on something that is critical to this nation, do we want to prevent his going?

MR. RILEY: The Governor could go on a mission of that kind without accepting a commission to bind the country or something of that nature.

MR. WORKMAN: He could go as an observer, but not as a participant in the sense of having been commissioned to do anything.

MR. STOUDEMIRE: O.K. That's what I'm trying to get at. Now, otherwise in this section, gentlemen, all we did was to make it clear"on the date of such election". He would have to be thirty by the date of the election.

MR. STOUDEMIRE: You want to leave that alone as it is. Strike out the note.

MR. McLENDON: Section C.

MR. STOUDEMIRE: I debated here. I said"after 1966" and I think that's a safe year right now. If this thing should get slow going through, then you could change it to '70. Or should we say '70 now?

MR. WORKMAN: Let me suggest this. For purposes of propriety and expediency, we keep it at 1966 which would indicate that this question was under consideration prior to the time that the candidacy of our Chairman becomes an issue. What I would do is disassociate it from anything as much as possible.

MR. STOUDEMIRE: Mr. Chairman, I assume we are ready for D. In D we decided that we ought to fix the dates, rather than leave it like it is now. E is something I think you have to have.

CHAIRMAN: Any questions on E?

MR. WORKMAN: It takes care of a two way or three way tie.

MR. STOUDEMIRE: Section F.

MR. WORKMAN: One little omission and I don't know whether it's necessary to put it in or not is the fact that the Lieutenant Governor, himself, must qualify. "If the Governor-elect fails to take the oath of office at the commencement of his term, the Lieutenant Governor-elect shall act as Governor until the oath is administered". The Lieutenant Governor at that stage will be Lieutenant Governor. He is not the Lieutenant Governor-elect.

MR. STOUDEMIRE: I will strike that. Section G. In case neither one of them qualify, "the office of Governor for the time being". I think we picked up that phrase from the New Jersey Constitution. At one time we had about ten things in brackets there as to what phrase to use and we came back "to the time being".

MR. WORKMAN: We found some citations on it that indicated that this was a temporary---

MR. STOUDEMIRE: And we didn't know how to fix that except by such a phrase.

MR. WORKMAN: Section H. That, in essence, is the same that we have here. This next one is the new idea. Section I.

MR. STOUDEMIRE: In trying to word that, we thought that there would be some senator who wouldn't mind being called Lieutenant Governor for a while.

MR. WORKMAN: I don't think you would ever find an occasion when somebody won't take the job although the guy who would be normally expected to take it, wouldn't if it meant giving up his Senate seat.

MR. STOUDEMIRE: We tried to word that so that if it was just a short period you still would stand a chance of getting a senator to run for it. We were most concerned with getting someone where you only had about a month to serve. We didn't think a man who was elected for a four year term, the first year of a four year term---

CHAIRMAN: Suppose you have a vacancy occurring the first year of a Lieutenant Governor's term. You have a three year term open there. You don't think there's any basis for saying that the vacancy ought to be filled at the next succeeding general election.

MR. STOUDEMIRE: We decided against that.

CHAIRMAN: I think this is very good.

MR. WORKMAN: K brings us down to that thing we thrashed around and never came up with a real definitive--

MR. STOUDEMIRE: Gentlemen, I came up really to this "In case of the temporary disability of the Governor and in the event of the temporary absence of the Governor from the State, the Lieutenant Governor shall have full authority to act in an emergency". And we worked with that thing and the only conclusion I can up to is, again, I don't think

Constitutionally we can define temporary disability, temporary absence or emergency. The only thing I think we can do in the Constitution is to try to point the way of extraordinary conditions existing. We tried to word it so that the Lieutenant Governor couldn't appoint a new health officer unless he could relate it to an emergency situation.

MR. WORKMAN: He'd be hard put under this to do self-serving things.

MR. SINKLER: The whole point of it is the court is going to hold that which is reasonable. I think I'd leave it like it is.

CHAIRMAN: I think you did a good job on that.

MR. STOUDEMIRE: Section L. New section. I don't know whether the Supreme Court likes this, but somebody should have it and we didn't know who else to give it to.

MR. McLENDON: Wouldn't there have to be some initiation of it to get it before the court?

MR. SINKLER: I don't know if we want this last sentence. You could have a judicial mistrial on an emergency and you couldn't act. Let's don't determine absence. Absence speaks for itself.

CHAIRMAN: I think you might say "removal from the State". You might say "to determine removal from the State and disability".

MR. STOUDEMIRE: All right. "...concerning succession to the office of governor" period.

MR. WORKMAN: Let's go back to the point Mac brought up. "The Supreme Court shall have iriginal, exclusive and final jurisdiction to determine removal from the State and disability...". How do you implement this? How do you bring the Supreme Court into the act. Who raises the question?

CHAIRMAN: I would think the Attorney General would petition the Court or if there were an adversary proceeding.

MR. SINKLER: Let him figure it out if he's just an ordinary citizen.

MR. WALSH: You have a number of situations in which the people have a right, but you go ahead and act and nobody challenges and that's it.

Mr. McLENDON: Wouldn't a citizen have the right under this?

CHAIRMAN: Let's take the most normal situation that you would expect. Suppose the Governor had a disability that makes him helpless or questionable, wouldn't the logical thing to do be to have the Attorney General petition the Court for a declaratory judgment under this.

MR. McLENDON: He could do it, but a citizen would have that same right.

MR. WORKMAN: If the question of disability arose, it would generally be a matter of public knowledge and concern within the official family that the Attorney General or the Lieutenant Governor, somebody, would initiate it. Suppose on this business of removal from the State. If the Governor just goes and stays and doesn't come back at the time set for his return. Who, then, would move? It would be up to somebody to undertake it on his own motion.

MR. McLENDON: That's right. Section M. Commander in Chief. What is the unorganized militia?

MR. WORKMAN: The Military Code and tradition, itself, contemplates that the militia shall consist of all able-bodied men of the State between 18 and 45 or thereabout--that is the militia of the State and the Military Code distinguishes it. "The militia of the State shall consist of all able-bodied male citizens of the United States and all other able-bodied males who have declared their intention to become citizens of the United States residing within this State, who shall be over seventeen years of age. The militia shall be divided into two classes, the National Guard and the unorganized militia."

MR. STOUDEMIRE: Section N. Clemency. Takes away the probation board.. Section O.

MR. WORKMAN: Section O has got a new element to it which is brand new and we think important.

MR. SINKLER: I notice you use the word "Legislature"and it's General Assembly everywhere else.

CHAIRMAN: If you are going to except the General Assembly, should we except the Supreme Court--keep the principle of separation of powers.

MR. STOUDEMIRE: I think back here we give the Governor the right to kick out some of these judges for bad behavior.

MR. SINKLER: Don't we want the Governor to have the power to institute and action if the Court failed to do it if it's the question of the disability of a judge or something like that?

MR. WORKMAN: We give him the right, by inference, over in Section W to suspend officers without regard to whether they be in the judiciary or not. "...any officer or employee of the State or its political subdivisions...". It's excepted there "...except Legislative and judicial...".

MR. STOUDEMIRE: We are really thinking about administrative departments, though, aren't we?

MR. WORKMAN: Yes.

MR. SINKLER: What about some magistrate or something like that?

I'd say the Supreme Court.

CHAIRMAN: I'd say so because suppose a Circuit Judge were indicted for a crime, shouldn't the Governor have the power to suspend him?

MR. STOUDEMIRE: Yes, because that gives protection down there. They could appeal it. Section P. That holds him to the same amount of money.

MR. WORKMAN: What was our rationale to make this "neither increased nor diminished..." whereas in the judges we made it "diminish".

MR. SINKLER: Term of office plus the fact that the Governor has a lot of influence on the Legislature which the Court, theoretically, doesn't have.

MR. STOUDEMIRE: My memory is that John West said to leave it this way.

MR. WORKMAN: Shall we leave it this way, neither increased nor decreased?

CHAIRMAN: Yes. Section O. The next two are virtually restatements.

MR. WORKMAN: Section R. We've got information to Legislature. There's a question of whether or not we use the word "General Assembly".

MR. STOUDEMIRE: Yes.

MR. WORKMAN: S.

MR. McLENDON: Why would the Governor call an extraordinary session and then if they didn't come in five days, he's going to adjourn it. Looks to me like he's going to have to have some way of enforcing. If he calls an extra session, shouldn't there be some way to make them convene?

MR. RILEY: "...may adjourn." It doesn't order him to adjourn them.

MR. STOUDEMIRE: Can you? Under separation of powers, he can't. The standard State government textbooks point this out. The Governor can issue the call, but he can't make them convene.

MR. WORKMAN: They have, in effect, been called back into session and done nothing.

MR. STOUDEMIRE: Gentlemen, under this Section T we combined a whole lot of little petty sections into one. I do raise the question here, should this Section be included in a new article on officers and I think it should.

CHAIRMAN: Yes.

MR. WORKMAN: What would come out? T and U?

MR. STOUDEMIRE: Yes. T and U would both be under the section for officers.

MR. McLENDON: Residence. I think the Governor should live where you say he belongs.

MR. WORKMAN: The term "in cases of contagion" strikes me as being an odd word. Would not "epidemics" be better?

MR. McLENDON: That's a better word.

MR. STOUDEMIRE; Section W.

MR. WALSH: I think that Suspension thing is good.

MR. STOUDEMIRE: You know we provided the waiver, the General Assembly could grant a waiver. Down here in the first paragraph "who has been indicted by a grand jury for a crime or who has waived such indictment if permitted by law..." (second paragraph)--is that the correct phrase? If so, I'm going to have to put it back up there in the top sentence. I caught the second one and not the first. If he has waived, he'd automatically acknowledging something, isn't he?

MR. McLENDON: He can be guilty, too. He can be convicted of a crime though he waived the presentment.

CHAIRMAN: The fact that he waived it doesn't mean that he is guilty.

MR. WORKMAN: Does he thereby become eligible for the application of this Section?

MR. STOUDEMIRE: If he waives it, he's submitting to trial, isn't he?

CHAIRMAN: Yes. That's the same as indictment.

CHAIRMAN: One word disturbs me here. The fourth line of Section W. "...is probably guilty of embezzlement or the appropriation of public or trust funds..." and I don't know a better word, but you're making an evaluation.

MR. SINKLER: Doesn't it require the Governor to exercise discretion.

MR. McLENDON: There's a better word. What is it?

MR. WALSH: Probable cause.

CHAIRMAN: "Whenever it appears to the satisfaction of the Governor that probable cause exists of the guilt of..."

MR. SINKLER: The only thought I have on this. We are excepting Legislative and judicial employees. That's going pretty far.

MR. WORKMAN: Of course, there is no provision to begin with, Huger. There's no provision that I know of that vests the Speaker of the House or the Presiding Officer of the Senate as being the ranking officers in the Legislative branch. They have no unusual authority with respect

to proceeding against the Clerk of the House or the Senate or against the Clerk of the Judiciary Committee or anything else so it's not a case where there exists machinery for the Legislative department to take care of its own malefactors within it so the Governor should be empowered to do that if it comes to the question of clerks or officials of the Legislature.

CHAIRMAN: Let's get to the question. Suppose a member of the House of Representatives is indicted for income tax evasion or manslaughter or self-defense and you've got to go through a trial. Do you want to give the Governor the right to suspend him from office?

MR. SINKLER: He ought not to hold office. He ought not to participate until he has been cleared.

CHAIRMAN: I'm inclined to think so.

MR. STOUDEMIRE: Thing says, "may be suspended" now so the Governor doesn't have to.

MR. WORKMAN: Now there are certain offenses which might be committed by members of the Legislature with the acceptance or tolerance of their constituents who are the people who put them there in the first place.. Now if it comes to a violation of areas involving misappropriation of public funds, I would say that there was an area that that conduct could not be forgiven by constituents, but there are certain areas of offenses where the constituents might say that they are going to elect them anyhow. If a senator were convicted of public drunkeness, his removal from office would most properly rest with the voters of his county, than with the Governor.

MR. WALSH: But if he stole $10,000 from the State of South Carolina, then it's a different matter.

MR. STOUDEMIRE: Another thing, gentlemen, that worries me. You can be indicted by a grand jury for a misdemeanor, can't you. Now I've got in here "...indicted by a grand jury for a crime..."

MR. SINKLER: What you really want is involving moral turpitude.

MR. McLENDON: I think that is better. "...crime involving moral turpitude.

MR. SINKLER: I think the Governor ought to be able to suspend almost anyone for any crime, but I don't think he ought to suspend a member of the judiciary and members of the General Assembly. I don't think they ought to be removed except for moral turpitude.

MR. WALSH: I don't see how you can set one standard for somebody that's elected and another standard for somebody that's just hired.

MR. WORKMAN: It's not setting a standard, but setting a process for removal.

MR. McFADDEN: You don't want to put the executive in a position of harassing, say, legislative officers when ultimately the people are going to have an opportunity to pass on a person.

CHAIRMAN; We're talking only about preliminary procedures leading up to an actual trial. I think there is a basis for distinction as you pointed out there, Bob.

MR. SINKLER: My thought was that the Governor ought to have plenary power except where a member of the Judiciary or the General Assembly is involved. Should he have power to suspend a member of the General Assembly under circumstances? I'm wondering about that. How about a member of the Judiciary? He certainly ought to be able to suspend a judge.

MR. STOUDEMIRE: Why don't you say "Any officer or employee of the State or its political subdivisions, except members of the General Assembly who have..."? Use that "except" to make it apply to legislators and to judges per se or you can make it to just say "...except legislators' I'm inclined to say "except legislators" myself.

MR. WORKMAN: Well, we're all in agreement that employees, no matter what department, should be subject to removal. Now it comes to the question of whether or not we will exclude from this legislators and/or judges.

MR. STOUDEMIRE: The removal thing over here about the Supreme Court for judges now applies only to the idea of malfeasance and disability and not to conduct.

CHAIRMAN: I think that "...except members of the General Assembly and members...". This is just when he is indicted by a grand jury. You're making it discretionary, but you're not giving the Governor the right to suspend...

MR. WALSH: Suppose you've got a member of the Supreme Court indicted for bribery, can he go on for a year trying cases?

MR. WORKMAN: Well, here, in an instance of that sort, I think it would be incumbent on the Supreme Court, itself, to cope with that situation while the forces of law, that is, the normal procedures for bringing a man to trial would go forward.

MR. STOUDEMIRE: You can impeach a judge, but that's a severe remedy.

CHAIRMAN: If he were guilty of bribery, he ought to be impeached. I'm thinking about such things as involuntary manslaughter or driving drunk or something like that.

MR. STOUDEMIRE: Legislators are elected, judges are not and I think this is a sharp distinction. That's the reason I would go with "... except members of the General Assembly...".

MR. McLENDON: And leave it like that. I would go along with that.

CHAIRMAN: "...except members of the General Assembly..."

MR. STOUDEMIRE: "...for a crime involving moral turpitude...".

MR. WORKMAN: Is there a way in which an individual, once indicted, can have his case disposed of in his favor other than through acquittal?

CHAIRMAN: It can be nol-prossed.

MR. McFADDEN: If the court would hear it without a jury--you wouldn't necessarily have to have a jury trial unless you wanted to write in that he had to be tried by a jury.

MR. WORKMAN: That's what we've got.

CHAIRMAN: I think this is pretty good. If a grand jury indicts them, they ought to be acquitted by a jury. All right, I believe we're down to Section X.

MR. WALSH: Is that in the right place, under the Executive Department? It seems to me that it relates to matters which are basically legislative rather than executive.

MR. STOUDEMIRE: As you know, our existing Constitution generally is o.k. until it gets down to that item veto and it would take a Philadelphia lawyer to understand, so we re-worked this thing.

MR. WORKMAN: I think the content of this is better under Legislative. It seems to clash with the running discussion of what the Governor does.

MR. SINKLER: Let's put it under Legislative.

MR. WALSH: And this same thing on Other State Officers.

MR. SINKLER: No, that's Executive.

CHAIRMAN: Does this continue to allow the item veto on any non-appropriating items of the appropriations bill?

MR. STOUDEMIRE: No.

MR. McLENDON: If we're going to put it in the Legislative, why don't we consider it when we get to the Legislative.

MR. WALSH: I think he ought to have the whole deal.

CHAIRMAN: Here's what can happen. A free conference committee can slip a rabbit in, something that shouldn't be in the appropriations bill and the Governor should have the right to veto.

MR. SINKLER: You've got to have it.

MR. WALSH: We have to have that protection because they will rabbit you to death. "If any bill..." -- does that refer to any bill appropriating money or any bill of any sort?

MR. STOUDEMIRE: That's the bad thing in ours. Applies to appropriating money, I believe.

CHAIRMAN: Why can't we say "If any bill deals with two or more sections unrelated" or "two or more sections", you can veto one without the other. Is there any reason that can't be done?

MR. SINKLER: Why not leave it the way we've got it?

MR. WALSH: You need to clarify that a little bit.

MR. WORKMAN: "If any bill presented to the Govenror shall contain one or more items or sections of appropriation of money, he may object in whole or in part to any such item or items while approving the other portions of the bill." Now this, as I recall it, does not relate to other bills which don't appropriate money.

MR. WALSH: So many bills do appropriate money outside the appropriations bill.

MR. SINKLER: Well, if that's the case, he's got a right to veto in part and that's what he should.

CHAIRMAN: Under the present system, although I'm afraid there's a legal question, the Governor takes the position that he has the right to veto the rabbits in the appropriations bill under the present section. Every year you find some rabbit somewhere that an adroit draftsman puts in there that oftentimes comes to light too late.

MR. STOUDEMIRE: Gentlemen, I think we might save this existing thing by the addition of one word. First, does the Committee wish the item veto to pertain only to appropriations bills?

MR. SINKLER: To any bill appropriating money. That's what I like.

MR. WALSH: I think it ought to be to any bill.

CHAIRMAN: Any bill.

MR. STOUDEMIRE: That's not what it says now.

MR. WORKMAN: Right now it's linked to appropriations, but there are others like the uniform commercial code and others of such broad scope that conceivably they could be attached---

MR. RILEY: I think just bills appropriating money.

MR. SINKLER: I do, too.

MR. STOUDEMIRE: Well, you can do that by saying right here "If the Governor shall not approve any one or more of the items or sections contained in any bill appropriating money, the Governor shall return the bill" and so on.

MR. WALSH: I think that sounds pretty good.

MR. McLENDON: We're going to move this to the Legislative section and we can take it up again.

MR. STOUDEMIRE: All right. I really didn't change this thing much. I judge that you people want this thing to stick as close to the existing language to clear up that--and you said "any bill appropriating money..."

MR. SINKLER: That's right.

MR. STOUDEMIRE: You remember we changed the amount of time the Governor could hold to seven days.

CHAIRMAN: I think that's reasonable.

MR. WORKMAN: Now, Bob, on Section Y, should that not be moved over into your other thing on Other Officers or Officers where you've got the oath and so on?

MR. SINKLER: That should be in the Executive.

MR.STOUDEMIRE: That's in the Executive Department. Bill, I would distinguish this--new section pertains to procedures and details of offices.

MR. WORKMAN: Now, I think that we ought to review what we've done in this note over here "Other State Officers". We have the Superintendent of Education appointed by the Board. Comptroller General is elected by the General Assembly. That's coming up under Legislative. Adjutant General to be appointed by the Governor. We agreed on that and that the rest of them, the Attorney General, the State Treasurer and the Secretary of State shall be elected by the voters.

CHAIRMAN: Again, I want to say to the sub-committee that we are most grateful. I didn't have any idea that we could get as far along as we did. The whole Committee is grateful. I think we've made a lot of progress. Am I to understand, just so Bob will know, do we think the Judicial Department, for example, is in good enough shape after the changes to go ahead prior to our meeting and send it to Mr. Holcombe?

MR. SINKLER: I think so.

There being no further business the meeting adjourned at 4:30 p.m.

W. D. Workman, Jr.
Secretary

Nettie L. Bryan
Recording Secretary

MINUTES

The Committee to Make a Study of the Constitution of South Carolina, 1895 met on Thursday, December 19, 1968 at 9:30 a.m. in the Wallace Room of the State Board of Health, Columbia, South Carolina.

The following members were present:

Senators -

Richard W. Riley
John C. West, Lieutenant Governor

Representatives -

W. Brantley Harvey, Jr.
J. Malcolm McLendon
Robert L. McFadden

Governor's Appointees -

T. Emmet Walsh
W. D. Workman, Jr.
Sarah Leverette

MR. STOUDEMIRE: Mr. Chairman, I invited Mr. Hodge to come in around 10:30. He is on the Board of Commissioners for Sumter County and is representing the County Association.

CHAIRMAN: Do you want to start on Militia?

MR. STOUDEMIRE: You might recall that the only problem here was making sure that the wordage of the Constitutio. did not conflict...or usage of terms applying to the National Guard and those not in the National Guard. We have checked that out pretty thoroughly and we think now that we have it where it does not conflict. We made the women part of the Militia. The Adjutant General appointed by the Governor, rather than elected. We kept the old exemptions for arrest when they were actually attending to their soldiering, and we deleted Confederate pensions.

MR. McLENDON: You really haven't exempted them from arrest when you say "breach of the peace" have you?

MR. STOUDEMIRE: If you use the federal ruling on Congressmen, the federal court says that "breach of peace" is so broad as to include almost anything.

MR. WORKMAN: One minor question comes up. Is the rank of the Adjutant General--in this thing here we say "...whose qualifications, rank, duties...shall be prescribed by law" so we don't pin down the rank.

MR. HARVEY: What about the limitation to two classes, the National Guard and the unorganized Militia? During World War II they had a home guard which was really an organized militia.

MR. WORKMAN: This language coincides with the Military Code, under which we operate. The generic term applies to everybody, so we take everybody, able-bodied citizens and we say the National Guard and the unorganized militia and then if you take from the militia a home guard, then that is in another category and it is available for organization.

MR. STOUDEMIRE: Springs from the unorganized.

CHAIRMAN: Any other questions? Now, impeachment.

MR. STOUDEMIRE: In essence, we just about kept what we had.

MR. WORKMAN: We changed the wording on that to try to make it a little clearer. What does the present Constitution say on that?

MR. STOUDEMIRE: "The persons convicted shall, nevertheless, be liable to indictment, trial and punishment according to law".

MR. WORKMAN: The wording there, we thought, tended to indicate that the guy ought...that he was subject to further prosecution. We want to say you may or may not be subject, but this doesn't affect it one way or the other. Impeachment proceedings are separate and apart from any other normal legal proceedings which might be brought against the individual.

CHAIRMAN: Do you think those adjectives "serious crimes or serious misconduct" add anything? Are they from the old Constitution?

MR. STOUDEMIRE: It's not from the old one. That's from Maryland.

MR. WORKMAN: What does the old one say with respect to offenses?

MR. STOUDEMIRE: Doesn't say.

CHAIRMAN: The term "serious" doesn't really have any meaning.

MR. WORKMAN: There was some discussion, as I recall, as to whether or not to put moral turpitude in there. In lieu of that we put "serious" which would give some indication... We wanted to get around the moral turpitude. We are deficient in South Carolina with respect to distinguishing between felonies and misdemeanors because there is no hard and fast line in there as to the seriousness of it.

MISS LEVERETTE : There wasn't a legal term that we could think of that would do it. Of course, the interpretation by the court would still be there.

MR. WORKMAN: You could just leave that phrase out. "The House of Representatives alone shall have the power of impeachment of officials elected on a statewide basis" if you want to leave impeachment just hanging on its own.

MR. McLENDON: Well, then you would leave it open for things other than crime and misconduct. The word may be superfluous, but I think it serves a purpose.

MR. STOUDEMIRE: Your original instruction was to redo ours, keeping what we could, but to model it on the Maryland provisions.

MR. WORKMAN: This is essentially the same as what we now have.

MR. HARVEY: In the trial of anyone other than the Governor, the President of the Senate presides. Is that it? It's not spelled out.

MR. STOUDEMIRE: "...be tried by the Senate" though. That would automatically make the presiding officer of the senate preside.

MR. HARVEY: What would be the position of the Lieutenant Governor as President of the Senate in the case of the impeachment of the Governor?

MR. STOUDEMIRE: The Chief Justice would preside. He would stand aside.

CHAIRMAN: All right. Any more on impeachment? All right, we go to Suffrage and Elections.

MR. STOUDEMIRE: All your regulations now are based on the old Constitution. Much of it has been rearranged and you remember that we reduced requirements to elections. A few of the statements on elections we transferred to the Declaration of Rights.

MR. WORKMAN: The title of the Article, Suffrage and Elections,is a change.

MR. McLENDON: We hashed over this thing in D, but refresh my mind again about "next preceding the election".

MR. STOUDEMIRE: Actually you base it on November 7th and go back six months. We said we needed a date to fix it on.

MR. McFADDEN: I have more people, particularly in a presidential election where there is coverage on that election no matter where you live, who feel they are being denied their rights.

CHAIRMAN: Bob, the problem is a practical one. It is done in some states. We felt if you went down to six months that would cure more than half of your complaints.

MISS LEVERETTE: That"next"always fixes it.

CHAIRMAN: All right. Any questions.

MR. STOUDEMIRE: On municipal elections that takes out that current four months thing that they are trying to get amended now. So many of our municipal wards overlap, your municipal boundaries in your

smaller towns. He's still got to show that he has been in town thirty days.

MR. WORKMAN: Let's ask Russ Mellette. Has the Municipal Association taken any stand on that?

MR. MELLETTE: Yes. We are highly in favor of amending that to make it uniform.

MR. WORKMAN: What this does is equate the residence required in a municipality the same as that required in the precinct. Puts those on parity.

CHAIRMAN: All right, the literacy test.

MR. WORKMAN: We determined to keep it as it was.

CHAIRMAN: Registration.

MR. STOUDEMIRE: Now registration. We tried to word it so that we wouldn't necessarily blackball the current ten year, but we would try not to prevent permanent registration if this is what people want to do in the future.

CHAIRMAN: I think you have done very well by that one.

MR. STOUDEMIRE: Section I is essentially like the one in the present Constitution.

MR. HARVEY: Before we leave H, how about "not previously registered". You're going to have cases where people have been previously registered, but have lost their registration. Have become ineligible to vote. They are stricken from the rolls if they don't vote twice now.

MR. WALSH: Wouldn't it be better to say "Provision should be made for registration during every year for persons entitled to be registered". You could be registered and move out of the state and come back again in a ten year period and then you statute would set up when and why.

MR. STOUDEMIRE: I'll buy that. Where are we now? J and K.

MR. McLENDON: Under that if you are standing in the voting line where it extends for four blocks and it takes two hours to get to the polls, would you be immune from the officer laying hands on you while you are in the lines?

MR. STOUDEMIRE: That's my interpretation. I'm for it myself. Section L, gentlemen, the old dual office holding thing which, I think, in our final draft will be part of a new section on officers. We just left it here until we are sure that we have everything in.

MR. HARVEY: Under this Section L, "...be eligible to hold any office unless disqualified by age...". We don't have any longer residence requirement on the Governor? Just so he's an elector.

MR. STOUDEMIRE: "Unless disqualified by age or other grounds as prescribed in this Constitution" is what you're saying.

MISS LEVERETTE: On this Section down here, wouldn't it be better to say "...provided this limitation does not apply...".

MR. STOUDEMIRE: I really think you need a broad statement here. "...unless disqualified...".

CHAIRMAN: Just delete "by age", wouldn't that do it?

MR. HARVEY: "...unless otherwise disqualified...".

MR. RILEY: Under K where we are talking about attendance at the polls, do you think it would be something to think about to put in there "for voting" because I know we had some instances of demonstrations at the polls. The people weren't there voting. They were just there to upset the voting.

MR. STOUDEMIRE: In other words you are saying, "...during their attendance at the polls for voting".

MR. WORKMAN: That's a good point that you have raised. The intent of this is to protect the participants in the election and not the demonstrators.

MR. STOUDEMIRE: It would have to be applied, really, as you were going to your regular ward. If the sheriff showed that I was standing over here in ward 10 and I vote in ward 6---

MR. WORKMAN: But you are an elector and you are in attendance at the poll and so you've got a grounds for content in that your presence there is legal.

CHAIRMAN: I would say, "...during their attendance at the poll for voting...".

MR. WALSH: In the explanation, I think it might be well for us to say that this is essentially the same provision and go further and say that we feel that this is something that ought to be retained, but it is not intended to protect anybody who is at the poll for purposes other than voting.

MR. WORKMAN: To make it affirmative, say this is designed for the protection of those people who are participating as bona fide electors at that poll.

CHAIRMAN: Any other questions.

MR. STOUDEMIRE: Now, gentlemen, you recall that the old Article II perhaps had as much dead weight as any other for its length, going back to the grandfather type of thing and details that we decided to kick out. Such things as the closing of the books. And then, of course, the bonded debt of municipalities.

MR. WORKMAN: We make reference to the fact that the Committee did consider this federal election bit.

CHAIRMAN: Did we discuss recall, too?

MR. STOUDEMIRE: Not really. I think it is caught up in that same thing.

MR. RILEY: Do you think that under Section L that that ought to be under two separate sections?

MR. WORKMAN: Dick, raises the question as to whether or not that should be split after "militia" into a separate section when you go into dual office holding as distinguished between the qualifications. In a sense it's a qualification, one disqualifies the other.

MR. RILEY: I believe I would prefer it to be in a separate section.

MR. WORKMAN: Is it not a separate section now?

MR. STOUDEMIRE: Yes. That agreeable to everyone?

CHAIRMAN: Let's go into the Legislative Department.

MR. STOUDEMIRE: Section A is identical to the current Constitution.

CHAIRMAN: All right, first page. We keep the two houses, we let the House members be elected every two years, fix the number at 124.

MR. STOUDEMIRE: I want to call you attention to "...to be apportioned among the several House election districts..." which can be a county or which can be something else in the event you can't keep your county. The presumption is that there will be counties.

CHAIRMAN: I think that's about as good as you can get.

MR. WORKMAN: This is implication that we keep it on a county basis, but it doesn't require constitutional change if the court orders it to do otherwise.

CHAIRMAN: Down to Section D. Again, it seems to be done as well as it can be done.

MR. WORKMAN: And we inserted in there "...provided that in so far as possible each county shall be entitled to at least one representative".

CHAIRMAN: Section E.

MISS LEVERETTE: How about that last sentence in E? Up here you said "Each House election district..." and down here you just say "Districts shall consist...". You want to pin that down with "each".

MR. STOUDEMIRE: Yes.

MR. WALSH: We have the assignment of representatives, but we don't have any assignment for senators. Does that mean that each senate district would have one?

MR. STOUDEMIRE: It didn't say. Left it open.

MR. WORKMAN: I think some of the hope was that in respect to the House, it would continue at least one member per county if possible, but we would renew the thing that this would be done on a population basis. In the Senate, it's left more open in case we do have an opportunity to put in on a county or some basis other than population so rather than to fix that, we determined the number of it instead of the mode of it.

MR. RILEY: I like the word "compact" in D and E, but do you think that might raise some question of any arrangement. That's a right generic type term. I think "contiguous" certainly would be.

MR. WALSH: I don't believe there would be any problem and it would be a good protection to put in there. Because we don't have the problem in South Carolina doesn't mean we can't have it.

MR. WORKMAN: We almost had in some of the proposals for Senate redistricting. "Compact and contiguous" is almost a phrase that is being used in most of the drafting.

MR. RILEY: I like the term and I think the district ought to be compact. I just wonder if that's a constitutional type term.

MR. WALSH: I think, as has been held in some of these other cases, the General Assembly's determination on it is pretty final unless it is clearly shown that there is just no connection or continuity between the areas.

MR. RILEY: How about this district, Anderson, Oconee and Abbeville? Is that in violation of the Constitution?

MR. WORKMAN: No, because those three counties abut next to each other but nothing's in between them.

MR. RILEY: They're contiguous, I agree, but are they compact?

MR. WORKMAN: Within the State geography, they are as compact as could be gained in that section of the State.

MR. STOUDEMIRE: Wouldn't the courts evaluate this from the standpoint of whether or not you could have done better?

MR. WALSH: I think so.

MR. STOUDEMIRE: And in this case I don't think you could have done better.

MR. WALSH: If you had ignored the county lines and had used a strip in one county to connect two counties on each side, then I think you would raise the question. That has been done in many states. They don't go by county lines or even municipal lines.

MR. WORKMAN: I think this is a proper term in the Constitution because it kinda' mandates the Legislature's desire to have it compact.

CHAIRMAN: I think it provides some reasonable restriction which is probably good. Then Section F with the explanation that we can have staggered terms if it is done by the General Assembly prior to the adoption of this provision. Any questions? G is the same. H. Any question on H? That, perhaps, is the biggest change.

MR. STOUDEMIRE: We say"within one year following the official publication You know the census comes out at odd times. If it comes out in April, that session can go ahead and get it over with if they want to. The next session would have to have it done by April of the next year.

MR. WORKMAN: It may be clearer there if we say"within twelve months". Then you would avoid any conflict of what is a year.

MR. RILEY: That G is unchanged, is that right? It looks to me like you ought to put "years of age" after the "twenty-five". You've got it after the House. I think we ought to leave it at twenty-five instead of twenty-one because I think that as many differences between the Senate and the House as we are capable of leaving in here, we should.

MR. WORKMAN: You think the distinction is worth keeping. Whatever difference there is, let it be.
MR. WALSH: Whatever difference there is, let it be. I think you ought to have two different Houses even if they're the same district because I believe the separate and independent consideration of measures just outweighs everything.

MR. HARVEY: I expect Dick is right, though I really don't see any basis for making a distinction.

CHAIRMAN: I don't see any real basis, but I think the practical, political aspects might--

MR. McLENDON: Yes.

CHAIRMAN: This sentence, "No apportionment of Representatives shall take effect until the general election which shall follow such apportionment". That confuses me.

MR. STOUDEMIRE: "...and shall be effective at the next general election." I think that would take care of it.

MR. RILEY: That changes the meaning of it, but I think the meaning should be changed. The way you are amending it, it would be mandatory to have it done and to have it take effect immediately.

MR. WALSH: I think it ought to take effect immediately.

CHAIRMAN: I think this is good.

MR. RILEY: This section will be very controversial in the General Assembly, but it is needed.

CHAIRMAN: This, as I read it now, it simply says that you have to reapportion within a year after the publication and then at the next succeeding general election---I think that's what we are going to have to do so we might as well do it in the Constitution.

MR. STOUDEMIRE: I don't know if you are keeping up with the other states, but in the last two or three years the other states going to annual sessions is really snowballing. We've jumped from about eight of three or four years ago to at least fifteen or sixteen or seventeen now.

CHAIRMAN: You can't plan a budget for two years with all the problems that you have. Section J.

MR. STOUDEMIRE: Takes care of that hang-over.

MR. WORKMAN: Senators actually serve through two General Assemblies, and the House members only one.

MR. STOUDEMIRE: Section K.

MR. WALSH: I think that is a correct thing, but I wonder if you shouldn't add "as provided by law". I think that is assumed. The law is going to have to provide how it is certified. Suppose people just hold up certifying.

MR. WORKMAN: We have tried to provide enough Constitutional mandates in here. The Governor at the top can mandate these people down the line to do those things that they are required to do.

MR. WALSH: That may be the answer.

MR. STOUDEMIRE: Section L,really,is exactly like the old one.

MR. RILEY: I know we had a lot of discussion about when the term ends. We just never say anything about that, do we? We just go into when the other begins.

MR. WALSH: One begins and the other ends. If you had a contest and one was not certified for two more months, the previous man's term, really, in effect continues.

MR. WORKMAN: It should be. I believe that there have been cases which have held that government abhors a vacuum and where there is no prescribed mode by which an office is filled, the incumbent occupies that office, so that normally until a new man moves in, the incumbent holds on. The phraseology that crops up in the Constitution "until his successor is elected and qualied". This has been the general language on the thing.

MR. McLENDON: The Supreme Court in some Highway Commission contest in the last four or five years simply declared a vacancy.

MR. WORKMAN: That is specified by date.

MR. McLENDON: But you can't hold-over legally.

MR. STOUDEMIRE: Would Section L take care of the thing?

MR. WALSH: I think we are talking here about members of the Senate and HOuse and I think that what we have here would take care of it.

MR. McFADDEN: That problem doesn't always come up when you come down to Columbia. It's the time between November 5th and the second week in January.

MR. RILEY: The only problem,as I see it,is if you do have a close election and a recount, then you have protest of the recount. That could take a period of a couple of months. You have the question during that couple of months as to who is the senator and who is the house member.

MR. WORKMAN: It may be well to put that thing in there, Dick.

MR. HARVEY: Talking about K now. "Upon certification of election and taking the oath of office".

MR. WORKMAN: I was hunting for a place that we could put in one sentence to say "to serve until his successor is elected and qualified", but we deal separately with House and Senate.

MR. RILEY: You could put it in K. You could say when it starts and then say when it stops.

MR. WORKMAN: Certification establishes, in my judgement, the legal right of the individual to the job which he seeks by election. Once certified, he has a claim on that job, but doesn't assume that job until he qualifies.

MR. STOUDEMIRE: Could you say this? That "the term of office of the Senators and Representatives chosen at a general election shall begin upon the certification of election and shall continue until a successor is duly qualified".

CHAIRMAN: Say that again.

MR. STOUDEMIRE: "...upon certification of election and shall continue until his successor has been duly qualified."

MR. WALSH: That's all right.

CHAIRMAN: To qualify, he's got to be certified and take the oath.

MR. STOUDEMIRE: We're getting into trouble here, gentlemen. How about a multiple district? You have four house members. Three are certified and one isn't. Who is the incumbent? We've been doing all this reasoning based on senators, but it says senators and representatives.

CHAIRMAN: I think we're probably going to have to go back to the way it was originally written.

MR. McLENDON: That's what I think and leave it there and let the law take its course.

CHAIRMAN: Let's go to M. That's the same, I believe.

MR. WORKMAN: At the risk of incurring some unpopularity, this business of "judging of election returns and qualifications of its own members" and you're going to have that thing crop up over here when this boy from Aiken comes and you get a conflict of Constitutional sections and I think that "the qualification of its own members" relates not to Constitutional qualifications, which should be fixed, but relates to whether or not there be personal qualifications and conduct. I do not think that the Senate or the House can lower the Constitutional qualifications.

MR. STOUDEMIRE: Could you say "qualification of its own members not otherwise fixed in the Constitution"?

MR. WALSH: I do feel you ought to make that clear.

MISS LEVERETTE: Could you use the word "except" in there? And then start a new sentence.

MR. STOUDEMIRE: "except such qualifications which are prescribed in this Constitution." I think you judge if you don't protest.

MR. WORKMAN: I think it's better to say "each House shall be the judge".

MR. STOUDEMIRE: "Each house shall judge the election returns" is good simple English.

MR. WALSH: I think it is.

(Mr. William M. Hodge, Sumter, S. C., representing the Association of Counties was then heard by the Committee.)

MR. HODGE: I have glanced through this thing. His Mr. Hodges statement follows:

At the outset, let me say I am sure all of you are more familiar with our constitution and the needed changes than I. However, I do not believe any of you have had any more experience in running the affairs of county government. I have been on the County Board of Commissioners of Sumter County for fourteen years, and during this time, we have constantly run into problems which we could not solve because of our outdated state constitution. If county government is to play the important role that it appears destined to have in local government, and if our state is to progress, we must keep abreast of the changing times. It has appeared to me for sometime that the federal government would like to return to the states and local government more self-determination in state and local affairs. However, to accept this challenge, it is absolutely necessary that our state make the necessary changes in the Constitution so that we may streamline our State and Local government to meet the needs and challenges of the times. I shall not make a speech here today, because I know all of you are busy people, and have a limited time to spend.

Some changes which I shall recommend may not represent the feelings of all county governments in our state. I think for the most part, they do.

First, we should have a constitutional amendment which would allow the legislature to pass an Enabling Act for county government on a reasonably uniform basis, so that counties may operate similar to municipalities.

1. County delegations should be required under the Enabling Act to submit the question to organize their respective counties under the Enabling Act on petition of 1000 citizens of the representative county; the questions to be voted on at the next general election after petition is presented. It should also provie the following: Elected County Commissioners, preferable elected at large throughout the county. These elected officials would be the ~~first~~ governing board administratively and legislatively, with final authority over all county business and other officials, including Judge of Probate, Treasurer, Auditor, Clerk of Court, County Superintendent of Education, if there need be one, Sheriff, Coroner, Master in Equity, County Service Officer, County Judge, and County Magistrates. And here I would like to say that the system of Magistrates throughout the state is outdated. There is no longer a need for Magistrates spread throughout the county, with our transportation system as it is today. With our courts overcrowded, it appears to me

that the Magistrates authority should be increased considerable to take out of the high courts so many of the small civil and ~~equity~~ criminal cases.

2. The Enabling Act should provide the power to tax to the County Commissioners.

3. County Manager. Power of appointment should be given over all bodies which are operated for county purposes, and paid for by county funds. Also, the county governments should be given the right to combine with the city governments within the county if they so desire so there might be just one county government for the entire county.

4. More and more, we have overlapping services between the city and county. In some counties public health is handled both by the city and county. Mental health is a county-wide operation. Counties should be authorized to put in water , sewerage, drainage and fire protection, where necessary. There are other areas of duplication which I see no reason could not be handled more simply and efficiently. There should be need for only one Treasurer. Tax Collections and assessments should be handled in one office. We have a duplication in the area of courts. We have the magistrates court for the

county, and recorders court for the city. Here again, I think these courts should be combined, and more authority given to the court on the local level. At the end of this, if you have any questions in regard to this, I will be happy to discuss them.

There is one other area which I would like to discuss. Apparently if an act sets up a commission just for Sumter County, or any particular county, it seems that the Senator and delegation may transfer their power of appointment to the County Board, if they so desire. However, if a commission is set up by the Senator and delegation as represented by an act of state-wide application, then the transfer would be unconstitutional. What I am trying to say is that even though under the state-wide act, while it affects all the counties, it only does it on an individual county basis, and I see no reason why the Sanator and delegation should not have the authority to transfer this authority to their respective county boards if they so desire, especially where there is no conflict state-wide in their doing so. The point is that in either event, the Enabling Act should provide for this transfer of authority.

In closing, I would like to point out that perhaps, even though it was not intended, the constitutional amendment which was passed in the last general election, I believe, has taken care of some of the problems we are talking about. This amendment was listed as No. 1 on the amendments we recently voted for. This states in the resolution a proposal to amend Article 7 by adding a section to be known as Section 15 which will allow collaboration between counties and municipalities, etc. I am directing your attention to this statement, and I quote, "The governing bodies of counties or municipalities, individually, or in combination with other counties and municipalities, may create, participate in, and provide financial support for organizations to study and make recommendations on matters affecting the public health, safety, general welfare, education, recreation, pollution control, utilities, planning, development and such other matters as the common interest of the participating governments may dictate. Participating governments may authorize and provide financial support to such organizations to provide facilities and services required to implement recommendations of such organizations which are accepted and approved by the governing bodies of the participating governments."

You will note this allows such government authority to study and make recommendations in many areas such as utilities, which are not contemplated by the present interpretation of county purposes. It then goes on in the other sentence to give a participating government authority to provide such recommended facilities and services as a participating government accepts and approves. I take the position this amends the constitution to allow counties individually to make a determination of such needs as utilities, recreational facilities, etc., and based on such findings, to accept and pay for the necessary program to implement the findings. Even if this is found to do what I think it probably does, it should be clarified.

In closing, I would go back to the one proposition which is paramount in my opinion, and that is this: That the constitution of the State of South Carolina should be amended so that county governments can operate as municipalities do today, with the same freedom of self-determination in all areas which affect the local programs of the representative counties, and the well-being of it's citizens, with the full realization that there are certain functions which the county must perform for the state, and in no way should these be impaired by the proposals I am making.

CHAIRMAN: Thank you, Bill. I believe that you will find many of your recommendations---

MR. HODGE: In glancing through this, I see that you have considered most of these. I think one of the most important things is that, administratively, in county government there is a lack of control of a central executive over the various offices. We find in Sumter County that we cannot control the help properly. In several offices, we have them sitting around reading books which is not really fair to the taxpayers. Trying to shift people around in the courthouse is an impossibility under the present setup.

MR. WALSH: We do have the biggest portion of what you mention.

MR. STOUDEMIRE: Mr. Hodge, we are proposing to take out old 10-6, the ordinary county purpose which would eliminate many of your problems on services.

CHAIRMAN: All right, M. Why can't we throw a fellow out the second time for the same cause?

MR. WALSH: What's the purpose of that?

MR. STOUDEMIRE: Same as the old Constitution.

MR. McLENDON: You mean the same offense. What if he's re-elected and comes back?

MR. STOUDEMIRE: Not a second time for the same cause.

MR. WORKMAN: The question is the cause. Whether it's the same incident, in which it would be double jeopardy. Whether it is the same cause, which is a class of offenses. If he embezzled money this year and the next year he embezzled money again---

MR. WALSH: You ought to be able to throw him out.

CHAIRMAN: Suppose a fellow just gets drunk and disorderly and everything else and you kick him out and the people re-elect him.

MR. STOUDEMIRE: Has the right to sit. The next one is from the old Constitution and I think has been used on one or two occasions. Now, all that page, P,O,R, is a pick-up from the old Constitution which you want to retain. I will say that in the final re-shifting--some of these things are not in the proper sequence they ought to be.

CHAIRMAN: Extend the time in T the time the Governor has from three to seven days.

MR. STOUDEMIRE: Remember the last time, you moved to take that out of the Executive Article and put it here. It reads the same except the Governor has seven instead of three days. I added here, about six lines down, "...if the Governor shall not approve any one or more items or sections contained in any bill appropriating money...". The old Constitu-

tion just said "any bill" and the reference is not quite clear as to what it is referring back to.

MR. WALSH: In other words, he doesn't have the item veto except on money bills. I guess that is right because another bill ought not to deal with but one subject.

MR. STOUDEMIRE: That's what we decided. To leave it and that's the way it has been interpreted.

MR. HARVEY: Why do you not have to have the concurrence of the Governor on a motion to adjourn?

MR. STOUDEMIRE: He could tell the Legislature that they couldn't go home.

MR. HARVEY: He can call them back in special session.

MR. STOUDEMIRE: He can't make you come.

MR. WORKMAN: The Presiding officers can send the Sergeant at Arms after you, but the Governor has no power to do that.

MR. STOUDEMIRE: I don't believe the Governor can make them act and if they come, he certainly can't make them pass the law he called them to pass. Now, some states say that the Governor can specify the agenda and the legislature constitutionally cannot go beyond the agenda of the special session, but that seems to be unduly restrictive.

CHAIRMAN: "All elections shall be public."

MR. STOUDEMIRE: Adjournments is the same thing. The yeas and the nays is the same thing. Doors open is essentially the same.

MR. WORKMAN: I think the intent here is that the proceedings of the General Assembly will be open to observation by the public. And if the rules say that the members have to stay in, they have to thrash that out with the Speaker.

MR. STOUDEMIRE: Now, vacancies, gentlemen, I think is identical with the old Constitution except the last sentence. "The filling of any vacancy where there is less than one year remaining in the term may be determined by laws enacted by the General Assembly". In many cases, it is not worth having an election, especially after the General Assembly has adjourned. That was the thought here. This would allow laws to regulate that.

CHAIRMAN : I think that's a good thought.

MR. STOUDEMIRE: Now, if you're ready for Z. Now, this is a new thought altogether you recall, where the Comptroller would be elected by a joint vote of the General Assembly and where the Comptroller would be the post-auditor and would be the financial agent of the General Assembly.

MR. WORKMAN: This sets up what is, in effect, a general accounting office at the state level and I think it's a good move.

MR. WALSH: Actually, the office as it is now operating doesn't perform the function.

MR. WORKMAN: This gives the Legislature some investigative audits, budgetary resources that they don't now have.

MR. STOUDEMIRE: It makes an official actually submit a report each year to the Legislature that says that your will, according to the appropriation bill has been fulfilled or it has not been fulfilled.

MR. HARVEY: What's the difference between a post-audit and an audit?

MR. STOUDEMIRE: Post-audit is an audit after the funds have been spent. You want to say audit?

MR. WORKMAN: I think it might be better because there may be occasions where you want the Comptroller General to look into the adequacy of funds before they are spent.

CHAIRMAN: All right.

MR. WALSH: What you are saying is that as it is now the Comptroller General determines whether the money is there in the first place. This officer really determines whether or not it has been properly and legally spent after it's already done and if not, then where and why.

MR. STOUDEMIRE: Yes. You would assume that the State auditor would be transferred to a budget officer and he would do the preliminary.

MR. HARVEY: And who is going to perform the job that the Comptroller General now performs?

MR. STOUDEMIRE: Through the budget office.

MR. WORKMAN: There is, and I don't know to what degree, an intimation in the Moody Report that you move toward an executive budget which is kinda' now a split budget where you've got legislative and executive.

MR. STOUDEMIRE: 43 states have an executive budget. I think your federal programs have done more than anything else to make the Governor your budget officer.

CHAIRMAN: All right. Extra compensation not permitted.

MR. STOUDEMIRE: That's the same thing. The special laws has been re-done. Your decision was that we do away with special laws except forestry and game.

MR. WORKMAN: The clause "whether a general act is, or can be made applicable, shall be a matter for judicial determination", what's the thinking--

MR. STOUDEMIRE: It is, anyway, Bill.

CHAIRMAN: I don't agree that it is entirely. Isn't it a legislative determination as to whether a special law is necessary or desirable? It is presently.

MR. STOUDEMIRE: I think this is in here to show clearly that you have a right to test them in court. That is from the Model Constitution.

CHAIRMAN: You are giving the judiciary, and it may be what we want to do, the right to make a policy or a fact finding determination.

MR. McLENDON: If you left out that whole phrase, you would be right where we are.

MISS LEVERETTE: Or you could say "may be a matter for judicial"

MR. WORKMAN: What legal right now exists to challenge the applicability of local or special legislation? Wouldn't be impaired by it, so there's not much need of putting it in there.

MR. STOUDEMIRE: You are quite true because we have had any number of them taken to the court. Is the will to leave this out?

MR. WORKMAN: I don't think it's necessary.

MR. STOUDEMIRE: "The General Assembly shall pass no special or local act when a general act is or can be made applicable" and then jump down "provided that special laws may be enacted to provide for forestry and game zones".

CHAIRMAN: Is that necessary?

MR. WORKMAN: Yes because your game zones and your forest zones are not uniform.

MR. WALSH: Let's leave it in there.

MR. WORKMAN : To do it properly, as it is now, you would have to amend the Constitution every time.

MR. STOUDEMIRE: All right. Codification. We cut out a bunch of that useless stuff. Now, Homestead exemption, gentlemen. Professor Means is the best authority that we could find on that and he has the flu. His off-hand opinion is that this homestead exemption is not needed, a statute would be adequate. Most of your Southern states do have something like this and a few others.

MR. WORKMAN: --exemptions from attachment.

MR. HARVEY: You can't take the shirt off a debtor's back.

MR. McLENDON: Is there any harm in leaving it in? This is one of those sensitive areas. I agree with you that it has no business in there.

MISS LEVERETTE: Don't you think that by pointing out that all of this is included in the statute would be sufficient?

CHAIRMAN: Let's do this,since we have somebody studying it, let's go ahead.

MR. STOUDEMIRE: That brings us back to Local Government.

CHAIRMAN: Let's start Local governments continue.

MR. STOUDEMIRE: I believe that first section--the editorial committee caught, but we have't decided definitely, but we thought we better reword that thing that "The powers possessed by all" these things now "continue until changed in a manner provided by law". That we didn't want to take a gap that a city somewhere was relying on old charter powers partly--that someone would argue that the Constitution was saying that we set this aside.

CHAIRMAN: It's a question of whether we could or not, but certainly it is better to have it. I can see a gray area where the Constitution makes changes and it is doubtful whether it is in direct conflict or not.

MR. WORKMAN: That's why we thought that the Legislature ought to address itself to these areas and then if they determine that there is a conflict, then by law say that new or old shall prevail.

CHAIRMAN: All right, Local governments continue.

MR. STOUDEMIRE: County boundaries stay unless changed by law.

CHAIRMAN: And no more than 46 counties. Everybody agree to that?

MR. STOUDEMIRE: Now, here's another one that is hard to word, but we think we've gotten it down after quite some deliberation.

CHAIRMAN: In other words, there are two systems of merger. Two ways it can be initiated. 10% of the population of each county.

MR. McFADDEN: Why not say every ten years? "...but no election shall be held for such merger more frequently than once in four years..."

MR. STOUDEMIRE: The old four year gimmick is in the present Constitution. That's where the four years came from.

MR. WALSH: I think four years coincides with a new group of people.

MR. STOUDEMIRE: I question the whole clause.

MR. WORKMAN: No limitation at all.

MR. STOUDEMIRE: "shall vote therefor in each of the counties involved" and the General Assembly by law would spell out.

CHAIRMAN: Do you think that this restriction is necessary on the General Assembly?

MR. WALSH: I'd be inclined to take it out.

CHAIRMAN: Just say "The General Assembly shall provide by law for the merger of adjoining counties".

MR. WORKMAN: The feeling was, in our initial discussion, that there should be some limitation on that so that the Legislature would not be given carte blanche to go in and mess up with the counties, without the approval of the people therein.

MR. HARVEY: Two powerful legislative delegations of two counties that wanted to merge could come and get practically anything through the General Assembly.

CHAIRMAN: I think the procedure here is good, but I just wondered if it should be statutory instead of Constitutional.

MR. WORKMAN: Our thinking was that it should be Constitutional in that it would put a check on the Legislature...

CHAIRMAN: I think you're right.

MR. STOUDEMIRE: Now, the next is sort of a deep thing, too.

MR. WORKMAN: Now, you struck from "involved" on, didn't you?

MR. WALSH: I'd say leave it out. Leave it up to the General Assembly, really. Times are moving fast.

MR. HARVEY: You're still going to leave in there that "a majority of the electors" must vote.

MR. WORKMAN: All that would be stricken would be "no election shall be held...more frequently than once in four years".

MR. HARVEY: Is "governing bodies" as used in Section D sufficiently defined elsewhere?

MR. STOUDEMIRE: Would "boards" be better?

MR. WORKMAN: I think "governing bodies" because in some counties it is Board of County Commissioners, Board of Administrators, County Councils all of which are governing bodies, but none of which have the same name.

MR. McLENDON: Aren't you going to run into problems because some counties don't have a governing body. If this goes through and there is still no change in the local government, this wouldn't give anybody the authority to make decisions, unless you adopt this local legislation.

MR. WORKMAN: It is part of the same thing.

MISS LEVERETTE: Right now, under the Constitution, there's no provision for legislative delegations anyway.

MR. McLENDON: That's very true.

MR. STOUDEMIRE: There is going to have to be a local body if the rest of it goes through. "The General Assembly must provide", Section G.

CHAIRMAN: All right. Let's get on to the merger of part of one county with another. Isn't this basically the present provision, abbreviated?

MR. STOUDEMIRE: Yes.

MR. WALSH: The only question I have on it, is two-thirds correct? I see nothing wrong with a majority.

MR. WORKMAN: Our earlier discussion went to the fact that this is a right momentous change affecting local government and if it is not carried by a reasonably substantial margin, then you could be buying an awful lot of grief. This was to beef to make a fairly substantial margin that showed the dominant will of the people.

MR. STOUDEMIRE: Two-thirds is the current Constitutional requirement. County seats. We sweated blood over this one, but I think it's clear. Now, we are back to the four years again. "...removed or established". We've got a new word in here to take care of this business of a section with a county seat moving across. This leaves your old county with establishing a new one.

MR. WORKMAN : This was to protect in an eventuality like the York community, the community around the county seat of York, were to join Cherokee, and then the remainder of York County would be without a county seat so therefore one would have to be established. It would be done by a vote of two-thirds of the electors in what remains in the county.

MR. WALSH: Suppose York says that they want to cut off Cherokee and it requires two-thirds for that. Now, the rest of the people don't have a county courthouse and they want to establish one. 60% of them vote to put it in Rock Hill. You don't have one. You can't get two-third

MR. WORKMAN: That's a valid point that I don't think we have considered. You are going to have to make it a majority or else you could stalemate.

MR. WALSH: As a practical matter, you're not going to be moving county seats and unless you are going to merge two counties the question is not going to come up.

MR. WORKMAN: I believe Emmet is right. In this instance, it ought to be a majority so you get a decision. In the other one, unless you get a substantial majority things stay as they are.

MR. STOUDEMIRE: That's right.

CHAIRMAN: Where are we?

MR. STOUDEMIRE: "...except by a vote of a majority of the qualified electors...".

MR. WORKMAN: To be consistent, should we not strike that four year limitation?

MR. HARVEY: I think I would personally leave two-thirds to remove it or change it and just have another sentence for a majority to establish a new one in the event the old one was cut off.

MR. WORKMAN: "No county seat shall be removed except by a vote of two-thirds or established except by a vote of a majority...". That's the intent.

CHAIRMAN: I go along with Brantley and Bob on that. All right. Classes of Counties.

MR. McLENDON: Under G, when you say, "No more than one system of classification shall be in effect at any one time...", you mean a city can't be in but one classification at a time. That's what you're saying, isn't it?

MISS LEVERETTE: The idea here was one system of classification.

CHAIRMAN: In other words, if you use population and something else, you've got to stick with population and something else. If you use population as the sole criteria, it's got to apply to all classes. Is that right?

MR. STOUDEMIRE: You couldn't have certain counties between 30,000 and 40,000 based on density of population and other relevent criteria and at the same time have all counties of 30,000 to 40,000. You've got to pick one or the other.

MR. RILEY: I don't think we'd ever use anything but population and I just wonder if it would not be advisable just to strike all this out and just say "based on population". Looks to me like the General Assembly could base it on density of population and that would still be on population and let's not go into the different systems.

MR. STOUDEMIRE: I don't see where it particularly matters, for two reasons. One is, you do have five choices. You are not limited from establishing all types of options within a choice. I could see where you could put in here that the local area, itself, could decide whether it's going to pick a, b. or c.

MR. WALSH: I'm not so sure that saying five--is that what you're saying is necessary?

MR. RILEY: I'm saying the different systems. In other words, system 1 will be a county with a population in excess of such and such. System 2 would be a county with a population in excess of so and so, with a density of so and so. I think when you get that refined in these various

systems that it's just cluttering up the thing. I would prefer it better if you say that it would be based on population.

MR. STOUDEMIRE: The five is put in there to prevent having forty-six. There is a law which says "towns between 7500 and 9000 by the 1960 census shall be able to have the manager form of government except Union" which means Aiken and Cayce, you see. I believe some of the cities adopted the manager government on their own. All have special laws.

MR. HARVEY: If you set 40,000 as a cut off. All counties having a population of 20,000 to 40,000 shall be class 2. 40,000 to 60,000 in class 3. Class 2 shall have such and such type government. Class 3 shall have such and such type. If a county has a population of 39,000, they are irrevocably bound to this type.

MR. WORKMAN: There are options within each class. The options exist as to whether you want a county manager form of government, board of administrators or whatever, but within these various counties that fall into a classification, there are certain options that they can adopt with respect to their local government. It achieves some degree of uniformity, but retains a fair degree of flexibility as to whether they are going to elect a county manager or whether he be appointed. This, I think, is the thinking.

MR. HARVEY: Why not specify, then, five options and don't put anything in about population?

MISS LEVERETTE: Population was the purpose of it. It's to show that in some counties that a type of government would be best suited to a lesser population.

MR. RILEY: The options would be kind of geared to different populations.

MR. WORKMAN: Simpsonville and Fountain Inn could have certain options of how they want to run their affairs, but they wouldn't be the same options that Greenville would have because of the different level and structure of government required. Greenville, Columbia and Charleston would have options which would be common in those areas.

MISS LEVERETTE: Your options would be geared to the population class for that particular group.

MR. STOUDEMIRE: Mr. Chairman, we have two things here at issue. Whether you want to restrict to one system which someone has developed an opposition to.

MISS LEVERETTE: What I was talking about was that it just didn't make sense to say it shall not exceed five in number, five classes. I realize that classification indicates that a classifying has been done, but it didn't make sense to say "no more than one classification shall be in effect at any one time". It relates, also, to what John said about population. If you say, "no more than one classification" you sound like you're talking about the whole works.

MR. WORKMAN: Why should we prescribe the basis on which the General Assembly establishes. Could we not just say, "The General Assembly shall establish by law classes of counties not to exceed five in number".

MR. RILEY: That's good.

MR. WORKMAN: The Legislature determines that density is a factor, then they can write it in. Population would be the obvious one, but there may be certain things like density that comes into it.

MR. HARVEY: "The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and responsibilities of the county governing bodies in each of the counties established", isn't it? Rather than "of the counties". You're talking about the governing bodies of the county, aren't you?

MR. STOUDEMIRE: We're talking about power to a county per se. You may set up a special board, even independent from the governing body.

MR. HARVEY: "powers of the county". Suppose the General Assembly got capricious and said the county falling in class 1 with a population of less than 20,000 didn't have the power of eminent domain.

MR. WORKMAN: For brevity, you can say, "The General Assembly shall provide by general law for the governing of counties in each of the classes established".

MISS LEVERETTE: I think there's a philosophy here, though. This thing strikes me as being a balance between the State and local government propositions. You're giving this power and authority to the counties and if you're going to insert "the governing of" or "governing bodies" then you're losing what I interpret to be the intent of this. Balancing off of your State government as it relates to local government.

MR. STOUDEMIRE: I think you need to say that they have to provide for the organization, the duties and the functions of a local government.

MISS LEVERETTE: You're talking about the authority of the county as a unit of the State. That may not be the intent of it.

MR. STOUDEMIRE: We thought it would be foolish to do all this by classes because there's going to be another thing applying to everybody. In other words, that you make a general law applicable to all classes of counties like the right to levy property taxes.

MR. RILEY: Doesn't that partly satisfy what you were concerned about, Brantley?

MR. HARVEY: No, I think I prefer what Bill is talking about. I think we're talking about the governing of the counties here.

MR. STOUDEMIRE: You're talking about their powers and functions.

MR. HARVEY: Powers of a county of 15,000 shouldn't be any different from the powers of a county of 200,000.

MR. STOUDEMIRE: You may want to give a bigger one much stronger zoning rights than you would a small one.

MR. WORKMAN: You aren't going to give the county council the burden of the right to levy taxes, are you?

MR. STOUDEMIRE: One way I would shorten it, "The General Assembly shall provide by general law for the structure, organization and powers of counties". I like the way it is, myself.

MISS LEVERETTE: I do, too.

CHAIRMAN: Anybody got a better suggestion than the way it is?

MR. McLENDON: Seems all right to me.

MR. STOUDEMIRE: This, to me, gives the General Assembly the right to set up a complete local system of county government.

MR. WORKMAN: Let me make one final suggestion. For the last sentence start off by saying, "The structure and organization, powers, duties, functions and responsibilities of the counties and of the several classes shall be established by general law".

MISS LEVERETTE: Bill, if you do that, are you going to get that mixed up with the general law applicable to the entire state as opposed to general law for the counties?

MR. WORKMAN: Well, what they do with respect to counties has to be done with respect to classes. They can't go out and determine that one county is going to do something within a class that another county in that same class can't do.

MR. STOUDEMIRE: Maybe the old Constitution on municipalities handles our problem for us. "The General Assembly shall provide by general law for the organization and classification" (and in this case) "of county government". "The powers of each class shall be defined so that no such county shall have any powers or be subject to any restrictions other than all counties of the same class provided", we would have to add, "that general laws can be made applicable".

CHAIRMAN: That sounds right.

MISS LEVERETTE: What is the major objection to the present wording?

MR. WALSH: Seems a little wordy. That's the only objection. We're all in agreement on the general principle.

CHAIRMAN: I think it does substantially what we wanted done. It just isn't smooth.

MR. HARVEY: I'll tell you what my objection is. Having served in the General Assembly, I think sometimes--well, let's take your big counties. They may feel they know what's best for counties between 10,000 and 30,000 population. We're going to say you don't need to have (of course, I realize they can't violate what else is in the Constitution) a five

man governing body, all you need is a one man governing body.

MISS LEVERETTE: You're objecting to the whole section.

(Break for lunch)

CHAIRMAN: All right. Did we get a fresh look at counties, classes of counties?

MR. WORKMAN: We determined that the intent and content was what was generally agreed upon. It's a question of perhaps eliminating a superfluous"General Assembly" which shows up two or three times.

MR. McLENDON: I think so, too.

CHAIRMAN: Let's go back to our old system of telling Bob that we think he's got it, but to polish it a little bit.

MR. HARVEY: I think I have a basic difference with the Committee in that I believe we should establish five forms or types of county government and say that then each county must opt to come under one of those, regardless of its size. I would leave this choice up to the citizens of that county, rather than the Legislature saying, "this is best for you".

MR. McLENDON: Brantley, then you would have Cedar Creek in Marion County the same as Spartanburg.

MR. HARVEY: We're talking about county government.

MR. STOUDEMIRE: One thing you are interpreting incorrectly, I think. Although you've got five classes, you still can set up options within each class. You can still give the local people the right to have a manager or not have a manager.

MR. McFADDEN: I think Brantley's concern goes to the power that would be granted to the General Assembly.

MISS LEVERETTE: But those powers are powers of the State to grant and the General Assembly is the State.

MR. WORKMAN: And they can't do them now.

MR. STOUDEMIRE: There is really not too much difference between the powers of a little town and a big one except on property tax limitations for your small ones and so many exceptions have been made to that,that that's not really germane.

MR. WALSH: I am inclined to agree with Brantley. I think that the size of South Carolina and the number of its counties that if you set up five systems and Beaufort County wanted to go in the same system that Greenville had--I don't believe you'd have that much of a problem, really. I think you're going to have four or five big counties and they will want a system that is more refined that will give them more power, zoning power and things of that nature--

MR. WORKMAN: Isn't that what we're doing, though?

CHAIRMAN: Brantley, doesn't this answer your argument? There's nothing here to say that a small county can't get in a classification with big counties.

MR. STOUDEMIRE: We're not measuring it on a thing.

MR. HARVEY: Why are you establishing classes of counties?

CHAIRMAN: Simply because you will want general laws applicable to certain classes of counties.

MR. WORKMAN: What we're trying to get around is special law that relates only to one county. Instead of having forty-six counties, as against the whole State which is 46 to 1, we say that we're going to divide it up into five categories and then the General Assembly simply and grant whatever options it wants to, make whatever regulations they want to, but it has got to be in these different five levels so that it can be done by general law instead of by special law. What we've got here now, actually, gives a greater leeway to the counties than they now have. They cannot now do certain things because it takes special legislation to let them do it.

MR. HARVEY: We agree with the basic premise, of course, to give the counties some power as far as local government and number two is to create some degree of uniformity. Instead of establishing the classes of counties, I would establish five types or classes of government, county government and let the county elect which one of those it wants to come under.

MR. McLENDON: You are taking the position that forms of government are different from counties.

MR. STOUDEMIRE: What he's saying is that it should establish at least five optional forms of county government .

MR. HARVEY: Each county shall adopt one of these.

MR. WORKMAN: This, in effect, is permitted under what you've got. What we're simply saying is that the Legislature shall determine, within these five categories, what options the counties may have. It may be that the Legislature could say, "We find that five systems of government are all that are available, each county can adopt any one of these it wants to".

MR. McFADDEN: That's not what the language says. The problem is the language says that you can limit your powers by your classes and therefore you can limit, if you've used population as one of your guidelines, you can limit its basic powers. It can't elect the form of government that gives it the broader powers because it's limited by the class itself.

MR. WORKMAN: This is more than you've got now.

MISS LEVERETTE: I'll admit that the counties ought to be able to choose. I'm in favor of leaving population in there,for that matter. But it seems to me that there are certain small counties who cannot support a viable certain type of government. They might want home rule and they can't even support it. They just are not in a position. They don't have the leadership. That's just an example and it seems by the Legislature setting like this, based on population, then they can give this broad classification with the options in there and give us uniformity and yet give the powers that should go to a certain size county, and you get uniformity and flexibility under this set-up. You don't get the hodge-podge that we now have.

MR. STOUDEMIRE: As I read it, this does not prevent the General Assembly from providing five options for each of five classes.

MR. WORKMAN: Let me try to cite the advantages, as I see it, stemming out of this. Right now, if Greenville County proposes to adopt Charleston County's Council plan of government, it would have to do it by Constitutional amendment and the Legislature cannot empower Greenville County to do these things that Greenville wants to do because it would be special legislation. So what's proposed here is to say that we take our forty-six counties, we arrange them in sections of five each, then we can provide by general law that counties having a city or town in excess of 75,000 population can enter into a pattern of home rule or they can, on vote of the people, set up a county council form of government. And this is general law which doesn't relate necessarily to Greenville, to Spartanburg, to Charleston, but to all of them. That they could come in on their own motion and do any of these things that they want to, but it cuts down the necessity of having to tailor a piece of legislation which goes to an artificial type of category. It puts five legitimate classifications that the General Assembly can treat uniformly, but not deny the participants in that category the right to choose whatever form of government that the General Assembly determines ought to be made available to them.

MR. HARVEY: Why let the General Assembly determine what type is best?

MR. WORKMAN: It puts you in a class, but it doesn't put you in a form of government. You can pick out whatever is available within that class.

MR. HARVEY : Then you're going to have a hodge-podge, aren't you?

MISS LEVERETTE: There would be minor differences within that option.

CHAIRMAN: You might have an option of either three or five commissioners in a county. Or you could have a manager or not within almost any of the categories.

MR. HARVEY: What I'm saying is why not set up these different types or forms and then let the county choose which of these it comes under.

CHAIRMAN: I think you would have many more practical difficulties. If you are going to set a form that Jasper County might adopt and Greenville. Obviously, you couldn't get a form, probably, that would suit both of those in the general form.

MR. HARVEY: You would have one form which was designed generally for large counties with large municipalities in it, but if a medium size county felt that this suited it, that's its decision to make.

CHAIRMAN: I don't think we're going to find that there is that much difference, really, as a practical matter. We selected five as sort of an arbitrary number. We probably could have gotten by with three. We're probably arguing over something that would rarely arise.

MR. HARVEY: You're going to design, certainly one of them is going to be the combination of city and county together--metro type government. I'm afraid then you're going to say, "but no county which has less than 100,000 population can use this".

CHAIRMAN: The General Assembly would be subject to the will of the people.

MR. STOUDEMIRE: Remember, now, this Constitution makes merger self-executing for your larger counties.

CHAIRMAN: As a practical matter, it just wouldn't happen. That's really local legislation.

MR. HARVEY: That's my argument--to set up the forms, whether it be three or five, and let the county, whether it be Florence or Beaufort or what size county,decide which one it comes under.

MISS LEVERETTE: If this was orignially intended to basically balance off the powers that the State is going to grant to counties--of course, that is probably what you object to, but I think it is the function of the General Assembly to do that.

CHAIRMAN: It may come that we want to give the right to classes of municipalities to enact a sales tax. All right, I, for one, am certainly very reluctant to give carte blanche authority to all counties to put on a sales tax. There might be some justification for a metropolitan area, combined city-county, to put it on.

MR. WORKMAN: I think we're losing sight of what, to me, is a fundamental principle of government here. That there are no powers inherent in a county. And the county can do only those things that the sovereignty of the State allows it to do. What we are trying to do here is to say that in alloting certain powers to counties, we're going to do it systematically by dividing the counties into these categories and then, within the wisdom of the General Assembly, there will be made available to the counties certain options which is true right now, except it's restricted because the General Assembly, under the Constitution, can't make exceptions from one county against another. This allows exceptions to be made within different categories. So, what we're doing is saying that the sovereignty which is granted into the State, the powers that the State has, are herewith delegated in these various areas to the counties divided up 1, 2, 3, 4, 5, within which the local people make their decision as to what they're going to do. You've got a savings clause over here at the back which says, "The

provisions of this Constitution and all those concerning local government shall be liberally construed in their favor." So, the whole emphasis here is toward local government, but it has to come by a grant of powers from the Legislature because there's no power there in the county to start with.

MISS LEVERETTE: That's my thought. That's what the purpose of this thing is, is to set up a system whereby the State can grant these powers on a rather uniform, and yet flexible, basis.

MR. STOUDEMIRE: Let me throw this out. I don't know whether it will help, but you will notice on your municipal laws, a great portion of that really is permissive only. For instance, Camden does not have to have a zoning plan, but the law says that towns the size of Camden may have. You may enact a business license ordinance, but the law does not compel any town to have a business license ordinance and I would assume that would be same thought when you draft a county set of laws. You authorize them to have a health board and therefore the local council would enact whatever they wanted to under the permission of the law.

MR. WORKMAN: It would not be sensible in the field of health that you're talking of that counties all the way down the line or the municipalities would have the right to set up boards of health. There would be a breaking point at which it would make sense and below which it wouldn't make sense.

MR. STOUDEMIRE: Another difference in here is that you may be fortunate in a small county to get three good health board members whereas a big county like Richland, in order to give health proper representation, you may want a board of fifteen members. These are variations that would be allowed here.

MR. HARVEY: Therein is where the basic difference lies.

MISS LEVERETTE: What you are doing now, you are giving each county the power to tell the State what powers it should have when the State is the granting--

MR. HARVEY: Giving it the power to select within three or five options.

MR. WORKMAN: That's what is protected here.

MR. McLENDON : As a practical matter, if we applied Brantley's theory to the present law which breaks down the cities into class populations, maybe, for instance, there's a 5 to 10 classification and the City of Marion, we'll say, falls within a 5 to 10 classification and there are a whole host of laws which apply, but there's also a whole host of laws, Brantley, which apply to cities above 100,000 which have no relevancy to my problem and your problem. Is it right for the City of Marion with 8,000 people to just arbitrarily say that it wants these powers that have been given to these cities above a 100,000. That's the theory you're talking about. What would that do now? If we did that now. If we did that, then this legislation for cities between 5,000 and 10,000 population, the general law which applies to that group--I'm opting to go and get into this classification. It would create a worse situation, I think, that this if you allow yourself to move from class to class at your own option. Seems like it would create untold confusion.

MR. McFADDEN: Isn't it true that as a matter of practice the counties have exercised this option in terms of what they pass as local laws.

MR. McLENDON: The counties are no different from the cities as far as their governmental structure and responsibilities. They're creatures of the Legislature and they're answerable to the State just like the city is.

MR. WALSH: For all practical purposes, most county governments are de facto governments not sanctioned even by Constitutional law.

CHAIRMAN: I think we've got a difference here so we may as well recognize it. How many want to keep the present philosophy and thought---Do you want to pass over temporarily on this and go on and look at the rest.

MR. STOUDEMIRE: New Section. "No laws for a specific county shall be enacted, and no county shall be exempted from the laws applicable to counties of its class or the general law provisions applicable in all counties enacted pursuant to Section G of this Article".

MR. WORKMAN: That's a re-statement of the current prohibition against special legislation.

CHAIRMAN: Section I. Municipalities, changing of municipal boundaries. Incidentally, Russ Mellette is sitting in with us and Russ if you have anything---

MR. MELLETTE: I did have a question. South Carolina is one of the few remaining states where it takes a petition and election process to annex. I am informed by the National League of Cities that in all of those other few states except South Carolina, the Legislature by special act can increase the size of a specific city. I take it by that language of this, we would maintain the status quo. The Legislature would be prohibited from enlarging the size of a specific city.

MR. STOUDEMIRE: Yes, for a specific city.

CHAIRMAN: It's up to the General Assembly to set the procedure, but it has to be done on a general basis. All right. Section J.

MR. STOUDEMIRE: Russ, you know that this doesn't require a petition. It just requires whatever criteria the General Assembly wants.

MR. MELLETTE: This would prohibit the General Assembly from increasing the size of the City of Columbia except using a general law.

MR. STOUDEMIRE: Now, we're back to the same thing we had for the counties, John.

CHAIRMAN: Any questions? Then we get to Section K. That answers your question, Russ, more specifically. Anybody argue with that?

MR. McFADDEN: Under our present system, we have a class of say, 5,000 to 10,000. We are not enacting laws---

CHAIRMAN: There are certain general classifications and then we'd pass a law, for example, saying that all cities with a population of 8,908, according to the 1960 census. That's creating a differenct classification and we're limiting that to five.

MR. McFADDEN: Under this draft, you can no longer do that.

MR. STOUDEMIRE: I would speak to that on two points, only. The limitation for millages on towns, I think those of 5,000, there is just amendment after amendment after amendment until about ten years ago somebody got wise and just upped the limitation for everybody and all of a sudden these special things have stopped. Also, this business of how long can a council be elected. All these exceptions and once you do it by a general law it keeps down all that ballyhoo.

MR. WALSH: I think your general law is good.

CHAIRMAN: There's no real reason why a mayor should have a four year term in one town of 5,000 and a two year term in another. Is there any real reason why a town of 5,000 should have a ceiling of 50 mills and another town of 6,000, 20 mills?

MR. STOUDEMIRE: The next Section takes care of a lot of people with their own problems. Section L. Home rule. Now, we agreed on 25,000. There will probably be some talk as to whether that should be lowered.

MR. MELLETTE: We are officially on record now as recommending to this Committee, cities over 10,000. The reasoning being that there's just not a lot of difference in that respect between Newberry and Sumter.

CHAIRMAN: Anybody have any other questions on that?

MR. McLENDON: What's the advantage of a charter form of government, Bob?

MR. STOUDEMIRE: This would mean---this is where you could get all the variation that you might want that would not necessarily be specified in the law. The charter thing, by and large, would pertain to the structure of your mayor and your council, provide for a manager, maybe. If you really want to know, look up the manager laws for Aiken, 7,000 to 12,000, is the best answer I can give you. That law was drafted in Aiken and brought up here and treated as a local piece of business and the Aiken law does have a lot of details on municipal regulations like the Civil Service Commission, that no elected official can serve on any other governmental payroll, they have a detailed procedure in there as to how the books are to be audited and on down the line. Really, the Aiken--the City Manager law for towns 7,000 to 12,000 is, in effect, the same thing as a home rule charter except to be legal in this State it had to go through the Legislature.

MR. HARVEY: If you lower the number of population to 10,000 so that any incorporated municipality with a population in excess of 10,000 can do this, then you don't really need but one or two classes for those under 10,000.

MR. MELLETTE:: Some of them may not want this.

MR. STOUDEMIRE: The big thing about home rule is that it really doesn't work if you don't have an active city. Your local people have got to be on the ball. The general law says that everybody's got to be elected at large, which gives you the chance to put it by wards or stagger the terms maybe. Then you have the right to specify.

MR. HARVEY: But you're not going to give counties that authority?

MR. STOUDEMIRE: If they merge. A county really is closer to the State than a city. The State does look to the county in South Carolina for everything it wants done.

MR. WALSH: But basically under the 1895 Constitution the county was simply that instrumentality used to carry out State functions on a local level. They were not independently organized government as such.

MR. STOUDEMIRE: I think the State of South Carolina would want to have more control over the county simply because the State uses the county in the welfare programs--

MR. WORKMAN: Well, by title and by function it is a political subdivision of the State.

MR. McLENDON: It is almost an arm of the State that the city is not.

MR. STOUDEMIRE: I would say that if South Carolina would enact a good series of class laws, I would be very surprised if we had many going under the home rule.

MR. WALSH: I'm for it.

MR. STOUDEMIRE: All right. Merger of governments in metropolitan counties. "...with a density of population in excess of one hundred inhabitants per square mile..." If you've forgotten now, that would by 1970 take in everything like Aiken and Anderson and Florence on up, but would hardly go beyond that.

CHAIRMAN: Section N.

MR. WORKMAN: What's going to have to be sold here is the fact that it's permissive and not mandatory.

MR. WALSH: Again, I don't know whether you ought to put that"one in four years" because my experience with annexation has been that sometimes you educate them on annexation after it's defeated and very often in a very short period of time realize that it wasn't such a bad thing after all.

MR. STOUDEMIRE: If we take that out, the General Assembly could limit it, couldn't they?

MR. WALSH: If they wanted to, they could. But this ties it if you put it in the Constitution.

MR. STOUDEMIRE: Section N. This is essentially what we voted on in the last election plus a little bit more. I don't want to get us off on the wrong subject, but Mr. Hodge was interpreting far more in that amendment than what can be interpreted.

MR. WORKMAN: He was stretching it, but he raised an interesting point of interpretation.

MR. STOUDEMIRE: I need to add here to my note that this does embrace the amendment.

CHAIRMAN: Bob, is this sufficiently specific to allow, say York County to negotiate with the City of Charlotte or Mecklenburg County?

MR. STOUDEMIRE: "Nothing in this Constitution shall be construed to prohibit the State or any of its counties, incorporated municipalities, or other political subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State." We drafted it that way showing that we knew that there is such a thing as the federal government and compacts. The only conflict I see here would be the interstate compact idea which must be approved by Congress.

MR. MELLETTE: The amendment that passed in November specifically said that these regional councils would not have the authority to tax.

MR. STOUDEMIRE: Section O is to limit your home rule, really.

MR. HARVEY: Back to this Section N. When you speak of "any county" this would be the county governing body, county council. It wouldn't require a vote of the people. I assume, though, that the Legislature could act and they could put a proviso in there requiring a referendum.

MR. WORKMAN: Bob, in Section N. This is a policy determination as to whether we want to approach it negatively or affirmatively. "Any county, incorporated municipality, or other political subdivision may" and you have "except to the extent prohibited by law, agree with the State...". Would it not be "to the extent permitted by law..."?

MR. STOUDEMIRE: All right. And that will take care of Brantley's question altogether, won't it? Yes, that would make it clear. Now, over here in Section O we thought that nobody should have the right to tamper with them locally. In essence, your bill of rights, election and suffrage would be statewide, bonded indebtedness, the judicial system, criminal laws and penalties therefore no home rule person could set aside a State criminal law. We worked and worked on this one and the best we could do "the structure and the administration of any governmental service or function responsibility for which rests with the state government or which requires statewide uniformity". The best illustration here would be water pollution and welfare programs. Even though the localities are involved, that a home rule charter couldn't say that there shall be no old age assistance in this municipality or area.

MR. HARVEY: This Section O doesn't say anything to me. You have spelled out your Bill of Rights which is your freedoms guaranteed the people. You've spelled out your elections and suffrage, haven't you and under that section it's said that the General Assembly may make certain general---

MR. WALSH: Aren't what we're meaning to say here is that if it's not clear in these other sections, these are things imposed by general law. Then we're going to say that home rule really cannot tamper with these.

MR. WORKMAN: I think that this, in contrast with the other, should be prohibitive.

CHAIRMAN: I think you should say that"the General Assembly shall not by grant of home rule powers or by legislation applicable to municipalities or counties, or any classes thereof, infringe upon"--

MR. STOUDEMIRE: All right. "The General Assembly shall not by home rule authority permit" the following categories of things to be done.

CHAIRMAN: Right.

MR. STOUDEMIRE: Section P. That's your old franchise right.

MR. MELLETTE: Is that wording "local authorities" the same as it was?

MR. STOUDEMIRE: You might say "local governing bodies". Would that be better? That's a new word. Or "the local governing bodies of the political subdivision" might be better. Section Q.

MR. HARVEY: That would include counties?

MR. WALSH: Any county that consolidates with a municipality. They couldn't do it unless they consolidated.

MISS LEVERETTE: Would you say "local subdivisions" or would there be any chance of interpreting that to some State commission or something of that sort?

MR. STOUDEMIRE: I think you would want it to the governing body.

MR. MELLETTE: Do counties now have the right of franchise for public utilities?

MR. STOUDEMIRE: No. This wouldn't affect them unless they merge. Now Q. "Any incorporated municipality and any county which consolidates with its political subdivisions may acquire..." and this is picked up from the old Constitution. I think our reason was really not to advocate public utility systems, but to protect the ones that already have them.

CHAIRMAN: Section R. "The provisions...shall be liberally construed".

MR. STOUDEMIRE: Otherwise, it would be construed in favor of the State, wouldn't it?

CHAIRMAN: Right.

(Break)

MR. HARVEY: I would prefer it to read "The General Assembly shall establish uniform forms of county government not to exceed five in number. Each county shall adopt one of these forms of government". Then you could even use the last sentence.

CHAIRMAN: Emmet, you'd better listen to this. I guess we'd better take a vote on this particular section. Section G. As you recall, we passed over Section G. All right, how many prefer Brantley's language?

MR. WALSH: Let me ask you this. As I would interpret that, that would be much more restrictive than what we have suggested here.

MR. McLENDON: I think so, too. Brantley, I think you would be defeating what you're trying to accomplish.

MR. HARVEY: Maybe it would. What I'm trying to accomplish is to give the county the option of which type or form of government it wants to adopt, though.

MR. WALSH: I'm impressed a little bit with his argument and yet I'm not so sure that I'm sufficiently in possession of enough facts and experience here today to say that there's that much difference in South Carolina between a county the size of Greenville and a county the size of Beaufort. It may be that both of them would like to do some of the same things and maybe they ought to have that right.

MR. WORKMAN: What disturbs me is that you are, in effect, assuming that the General Assembly is going to deny them that right whereas I'm assuming that the General Assembly is going to look and see the whole picture and say that there are areas in health, in tax collections, and in bookkeeping in which certain accepted procedures ought to be followed by all counties and we make this available within the options.

MR. WALSH: Say that any county by such and such a procedure may elect to do these things. Just like zoning in a city now.

MR. WORKMAN: And this is the type of thing that I think the Legislature will build in to the forms of government available to the cities as they fall within these five classes. It may well be that in certain areas with respect, arbitrarily I'll say finances, that there will be a method which would be, the same method available to all five.

MISS LEVERETTE: The object of this is not for the General Assembly to restrict, but the General Assembly to permit according to this particular need.

MR.HARVEY: Well, give me an area where you think there is a distinction and should be a distinction, or a classification by counties. An area where you think one class of county should be able to do something and another class should not.

MR. WORKMAN: You move into that, perhaps, in the area of health. Where the health problems of metropolitan areas with heavy congestion, the opportunity to enact certain local regulations with respect to health, not contravening the State thing. Bonded indebtedness, for example. I think you might have legitimate distinctions--not bonded indebtedness, but finance in general, between a county the size of Jasper and a county the size of Greenville when it comes to the conduct of its fiscal affairs. The most specific one that I can think of relates to the experience in Georgia. Counties having cities with populations in excess of 50,000 or 75,000 would be permitted to enact either occupational taxes or sales taxes or something of this type where the county's need for county funds is great enough that you've got to think in terms of a special county tax in an area which is not normally acceptable. Sales tax. No counties I know of in South Carolina are thinking about a sales tax. But a lot of them are thinking about automobile taxes, county automobile taxes. This is not precisely in point, but it could well be that counties where the need for county funds is greater than the ordinary property tax would take care of, that you ought to open up certain additional areas either by automobile license or by sales tax and this would be an area in which a county could operate on its own. Has that permissiveness to go in without making the same thing applicable down in small counties. One of our difficulties here is that we are in general agreement as to the necessity, almost the urgency, of providing a mode of local self government because the old mode,whether we liked it or didn't like it, is now falling to pieces under reapportionment. So we've got to provide an area of local self government. Within that, as we grope around in South Carolina within this Committee for some experience which is new to us, we see Charleston which is first in South Carolina and others and then we turn to see what other jurisdictions have done, and in almost every one that we've turned to that have this, they've set up classes of counties and within that they've tried to achieve some degree of uniformity. Not impose uniformity , but voluntary uniformity in that they have certain options that they can take.

MR. STOUDEMIRE: It would appear to me that in South Carolina that most authority given to counties will be done under this last clause. "The General Assembly may enact general laws applicable to all classes." I think that most of your things are going to fall under that. I would think most of your variations would come in such things as managers, getting boards at large or by district, size of boards, things of this nature.

MR. WALSH: I think we might be worrying over something that is not there.

MR. McFADDEN: I think that whether you start from the abstract that the county is a subdivision of the State government--that may well be and we may be doing things now that we can't do under our present Constitution, but as a practical matter there needs to be some protection,

if that be the proper word, for your county as a unit of government. You're going to have your flexibility that you're talking about. Taking the approach that Brantley outlined, gives the option to your local people to choose its form of government and to assure it that they can act effectively within the scope of their powers. The General Assembly could also make it possible that a county that wanted to go beyond that by its general laws could do so. In your basic forms of government, you're not going to have the differences that you now have.

MR. STOUDEMIRE: One thing,I think,where you people disagree with us, you don't see the possibility of variation that I see. Now, what would you say if we added this short clause "The General Assembly shall establish by law classes of counties not to exceed five in number, provided that optional forms of organization may be provided for each class" which would make it clear that if you have a class under 30,000 then the laws could say (a) "The Chairman of the Commission shall be the Chief Administrative officer (b) they shall have a manager" in this set-up if they wish. "(c)elect all board members at large (d) elect by wards",you see. That's what I think, the way it's worded now, they can do anyway, but that would make that portion of it clear.

MISS LEVERETTE: Option within classes.

MR. HARVEY: I have not yet seen any reason to classify county, and we've discussed it, we've left open what you're going to classify it on--where those are absolute, should be the criteria whereby you set forth the powers that these various forms of county government are going to have.

MR. WORKMAN: There's no problem if you've got a category where 40,000 is the breaking point and you anticipate that on one side there is a favorable form of government below 40,000, substantially below, and there's another form of favorable government substantially above 40,000. Well, the General Assembly quite handily can incorporate both options on both sides, so if there's a desire to move in either direction it can do so , but it moves by virtue of arriving at that class and it does so on its own motion because by being within that class it is allowed this flexibility whereas under what we've got now, our present Constitutio is almost devoid of any reference to county government except insofar is says "That the General Assembly shall not enact local or special laws where general laws may be made applicable". What we are trying to do is to let the Legislature say we make general laws applicable, reserving these options, and then so that we, the General Assembly, in order to cope with county government don't have to constitute ourselves as the governing bodies of 46 different counties. Instead, we say within these things,to counties you are off and running on your own with certain restrictions, but with certain options.

MR. STOUDEMIRE: I see here the General Assembly enacting two classes of law for counties the size of Fairfield on down. I would break it at 30,000. I have a hunch that they're going to be almost identical up to the point where somebody wishes to give your larger counties more financial freedom.

MISS LEVERETTE: I can't anticipate the General Assembly keeping any county---

MR. STOUDEMIRE: I would say that if you are going to make laws for big counties and little counties that Beaufort would be among the big counties.

MR. HARVEY: I realize the basic principle you are arguing is that the county is a creature of the State, but I still don't see what's wrong with local option. People in that county, through their elected officials, selecting which type of county government, from among the types spelled out and specified by the General Assembly.

MR. WORKMAN: This is exactly what we're trying to do.

MR. RILEY: That's what it is.

MR. HARVEY: Then don't classify the counties.

MR. RILEY: You have to classify the counties or either you have to have laws pertaining to each particular county or either just one kind of law.

MR. HARVEY: No, you have several types of county government. We've talke about five and you say to the county you must select one of these five.

MR. WALSH : Brantley, if I understand what they do in some other states correctly, though, what you say you want can be done exactly the way we're saying here. They say type 1 municipality. You could call this a type 1 county and Beaufort could be a type 1 county. They might not classify it on population. They might just say type 1 counties. All counties who desire to do these things will have these powers. And you just select what type you want to become. I think you can really do what Brantley's talking about in the language we have here.

MR. McLENDON: This spells out the power of the General Assembly to classify counties and to chop off the power of a smaller county, as the case may be, to do certain things. To say that this county below a certain population can't have its own county health department. Force it to go into a regional health department.

MR. WORKMAN: You can't create special things like that now without Legislative authority.

MR. McFADDEN: But as a matter of practice--the language here is a more radical departure from what we have now. I agree that there should be more of a uniformity in county government, but you can achieve that uniformity by mandating the counties to select certain specified forms of government.

MR. WORKMAN: Which is certainly wide open.

CHAIRMAN: I don't want to put off any debate. As many as favor Brantley'

proposal, his revised wording, raise your hand.

MR. RILEY: Brantley, what is your wording?

MR. HARVEY: "The General Assembly shall establish uniform forms of county government not to exceed five in number. Each county shall adopt one of these forms of county government" and then "The General Assembly shall provide for the structure, organization, powers, duties, functions and responsibilities of the various forms".

MR. RILEY: I know you are entertaining a motion, but would there be any objection to submitting his language to Professor Bain and asking him to give us his criticism on it or suggestions on it. I know we might not meet again.

CHAIRMAN: The only question is that we are struggling to get a draft that we can submit. Actually we've gone through this once,you see. We will have a public hearing and we'll have another chance and I think for the sake of getting this behind us we ought to take a vote on it.

MR. RILEY: What Brantley says sounds good to me, but I think there's some problem there in that you're talking about the difference between special and general law and I don't quite understand it.

CHAIRMAN: Those in favor of Brantley's position, raise your hand. Two. In favor of existing? Five. I think Dick's idea may be a pretty good one. Brantley, would you like to propose this question to Professor Bain? All right, let's get on. Finance and Taxation.

MR. McLENDON: I don't know what the program might be. Mr. Sinkler is so vitally interested in this and the people are going to look to him for a word of wisdom in connection with it. Is there any virtue in putting it down the line? Are we up against such a deadline that we need to move?

CHAIRMAN: I think we can finish this afternoon. I believe it was our intent to finish this proposed, tentative revised version and we would then circulate it to the interested members of the public and invite their comments and lead up to a public hearing. Shall we set a target date of about the middle of January to have this ready to mail? It was mentioned earlier that we would like to get the Governor to make a favorable comment in his State of the State address which is going to be on the 15th.

MR. RILEY: John, I would be inclined to think that the best time to push it in the General Assembly would be next year because we can't have anything take effect until after the general election and even if we pass something this year, we could find ourselves getting back into it next year.

CHAIRMAN: I'm inclined to think that the big push will, assuming we go the amendment route, the big push would come next year.

MISS LEVERETTE: Don't you think that there's an element of public education in there, though.

MR. STOUDEMIRE: You still want to submit the completed document.

MR. WORKMAN: We'll recommend some priorities on the articles and we'll make a determination as to what the Committee will recommend by way of procedure on revision. I think that those of us who favor Constitutional Convention would simply say so. Whatever the prevailing thought of the Committee is, at this moment it looks to be article by article, in making that recommendation we establish certain priorities and recommend that the Legislature move rapidly in clearing up these articles so that they can be submitted in 1970. My personal evaluation is that the public, generally, is expecting us, as a Committee, to pretty well terminate what we've been laboring on since April of 1966. What I would like to do is to see us, after the public hearing, turn over to the General Assembly the completed results of our work and whether or not we're discharged as a Committee, give the results of our work to the Legislature and then thereafter take a part wherever we can individually,--all of us continue our interest in pushing this thing. The Committee complete its work as early as possible in this next Legislative session.

CHAIRMAN: I don't know whether it would be appropriate to mention it in our report, but one thing that has been encouraging to me is the fact that we will have accomplished what we set out to do at a cost which is only a fraction of what the average cost is in most other states.

MR. WORKMAN: We're thinking now in terms of completing our work, with public hearings on or around February 1st. And that we hope to have, on or around March 1st, the final printed version of our report in the hands of the Legislature.

MR. STOUDEMIRE: Last year I did a short working paper on what brought all this about and what we set out to accomplish and our methods of procedure. You still have not discussed how you are going to recommend to the General Assembly to bring about these changes or if you are going to make a specific recommendation.

CHAIRMAN: We will take a vote on what our recommendation will be after the public hearings. Then, if these votes--even if it's only a minority for the article by article revision, there should be a listing of priorities and a segregation of articles, saying this article should be voted on and so on down the line. All right, let's get on Finance, Taxation, and Bonded Indebtedness.

MR. WORKMAN: Section A is no major changes.

MR. STOUDEMIRE: Only we deleted the income tax statement. We saw no reason to include, and I don't think the Committee ever discussed this, any direct grant to the General Assembly on the income taxes because you can impose it unless something says you can't.

MR. WALSH: I agree with that.

MR. STOUDEMIRE: The Committee agreed not to classify property. Also

we left out this business about the right to tax intangibles at a lesser rate. Now, under the Exemption article over here the General Assembly can do that if it sees fit. Now, I really think, Mr. Chairman, it might pay us to do A, B, and C together because a lot of the things that are left out are taken care of in B. You remember your original decision was that things now exempt by taxation in the Constitution ought to be spelled out once again. Therefore, we left the exemption of taxes pertaining to governmental units within the state, schools and colleges and we re-worded that to bring it up to modern language.

MR. WORKMAN: Let me raise a question because it may come up. Let's revert just a second to the income tax. Now it was necessary on the federal side to pass the sixteenth amendment which gave the federal government the right to levy a graduated income tax. Was that done because of the feeling that this was a power which had not been delegated to the State?

MR. STOUDEMIRE: No, It was a direct tax therefore it had to be apportioned equally among the states.

MR. WORKMAN: That's right. My question is--the feeling is that it is not required, a similar statement, within the State Constitution because the State has that inherent right in the absence of any prohibition against it.

MR. STOUDEMIRE: We're giving property taxes the sanctity of the Constitution and we're not doing that for any other tax and I could argue unequal treatment.

MR. McLENDON: In B, subsection b, I think we ought to insert the word, in addition to "charitable institutions", I think we ought to insert the word "charitable trusts and charitable institutions". There is a distinction.

MR. STOUDEMIRE: Is a charitable trust subject to property taxes? That's all we're talking about, property taxes.

MR. WALSH: Your situation would not be cured by this because it was hit first by the federal.

MR. WORKMAN: I would like some legal counsel on this business about charitable institutions in the nature of hospitals and institutions. You say "except where the profits of such institutions are applied to private uses". The three of us wrestled with this thing at considerable length trying to differentiate between hospitals which are genuinely public and those which are operated by individuals for whom it makes a living,of good or bad degree and the question of degree could seriously jeopardize whether or not it should be tax exempt. Can you think of a better language to use on it? Some of these drying out homes can be considered in the nature of a hospital, but some of them I know have made quite substantial sums of money for their owners.

MR. STOUDEMIRE: Mac, we came to the conclusion in doing this thing, to keep the same type of language as the old Constitution, but we could not prevent court cases.

CHAIRMAN: As to Section B, are these generally the re-stated provisions of the existing Constitution?

MR. STOUDEMIRE: Yes, but we had to break them down differently because it is so hard in the old Constitution to figure out what it does say.

MR. McLENDON: If you are going to put "charitable institutions", what's the harm of putting "charitable trusts"?

MR. STOUDEMIRE: I have no objection.

MR. HARVEY : Wouldn't Mac's be answered by adding a (d) here and saying "trusts, the income from which is used for any of the three, a, b or c"?

CHAIRMAN: Do you mean to exempt all schools whether they are profit making or not?

MR. STOUDEMIRE: "And the property of all schools, colleges, institutions of learning..." is the way it is spelled in the old Constitution. "The exemptions granted under subhead "b" and "c" insofar as such exemptions apply to real estate shall not extend beyond the buildings...except where the profits of such institutions apply to private..." John, that would take care of it.

MR. McLENDON: Have you decided whether or not you are going to insert my "charitable trusts"?

MR. WORKMAN: We're finding on a national level that there have been tremendous abuses of these things. There are some 18 to 20 people who draw income in excess of a million dollars a year who don't pay any taxes by virtue of funneling it to them through foundations where it's not susceptible to being taxed. There are other enterprises, other foundations set up which ostensively are charitable, but which actually are tax dodges that accrue to the benefit of some individual, or group of individuals or a family, by which they evade taxes. There are dangers in what we're doing.

MR. RILEY: In "a" part here where the final language "if the property is used for public purposes" would cause some problems where perhaps you could use the same language as "b" "except where the profits of such... are applied to private uses" because of the city auditorium where they have wrestling matches and the State buildings and so forth where they are private purposes, but the money is used for public usage. You see the distinction I'm talking about.

MR. WORKMAN: We thought we had that covered, I believe, by making it "public purposes" because the operation of the Township Auditorium and the derivation of revenue thereat is a public purpose in the sense that this defrays the cost of the building. Nobody profits by it so it's a public purpose although it is rented out for private use. The Coliseum is going to fall in the same category. The Township Auditorium, the Coliseum will be used for revenue, so we put "public purposes" in there in the sense that this would be where the earning of revenue would be attached to public purpose in the payment of rent.

CHAIRMAN: Where do we stand? Have any proposed amendments?

MR. STOUDEMIRE: The only thing is whether we add another section "d" to take care of Mac's suggestion.

MR. McLENDON: If you're going to use the word "charitable institution", I don't see any harm in adding another term called "charitable trusts". It's just as difficult to determine what a charitable institution is as a charitable trust.

CHAIRMAN: Just say "charitable trusts and institutions"?

MR. STOUDEMIRE: "All charitable trusts and foundations".

MR. HARVEY: Go back to Section A. Your note on the right says, "The provisions on intangible personal property have been omitted. See the explanations in Sections B and C."

MR. STOUDEMIRE: Section C. "In addition to the exemptions listed in SEction B of this Article, the General Assembly may provide for exemptions from the property tax, but only by general laws applicable uniformly" (according to Joe Allen, now) "to property throughout the State and in all political jurisdictions." It is our reasoning, then, that stocks and bonds, household furnishings, manufacturing property all could be enacted under this C if the General Assembly saw fit.

MR. HARVEY: Still, why leave out intangible personal property from Section A?

MR. STOUDEMIRE: Because nobody taxes it now.

MR. McFADDEN: By the Constitution and by a decision by the State Supreme Court about 1932, it's not subject to taxation.

MR. STOUDEMIRE: Unless the General Assembly activates it.

MR. McFADDEN: The General Assembly can do it now.

MR. WALSH: And you could do it under this.

MR. STOUDEMIRE: In effect, it is taxable, unless you pass a law to exempt it.

MR. WALSH: There is no tax imposed now.

MR. HARVEY: You say personal property and real property are specifically subject to tax.

MR. STOUDEMIRE: Unless you pass a law to exempt it,by general law throughout the State. The way we've got it drafted now is that intangible would be taxable like anything else unless the General Assembly passes a law exempting it.

MR. McLENDON: But the General Assembly, under your proposal here, has got to take the positive step. You still would have to have an affirmative act to tax it.

MR. WORKMAN: Unless in your counties the assessor, under this thing, could come and add that to your property.

MR. STOUDEMIRE: You can't possibly exempt all of these things in the Constitution without an ungodly long section and detail.

MR. HARVEY: I'm not talking about exempting, I'm talking about why you didn't make it as the third category under Section A.

MR. STOUDEMIRE : Because we didn't think it deserved any more treatment than anything else.

MR. HARVEY: The first category is real property. It's taxable. Personal property is taxable. Now, you tell me that intangible personal property is taxable. Why didn't you say so?

MR. WORKMAN: That's personal property. It's a variety of personal property which would be taxable.

MR. HARVEY: O.K.

CHAIRMAN: O.K., we're down to D now.

MR. STOUDEMIRE: Mr. Allen suggested this change here. "Taxes shall be levied on that assessment" he says, rather than "on the same".

CHAIRMAN: Section E.

MR. RILEY: If a county wanted to have a homestead exemption, they couldn't do it.

MR. STOUDEMIRE: It would have to be done by general law uniformly applied throughout the State.

CHAIRMAN: If a county wished to give an exemption to a new industry for five years, it would have to be by general law.

MR. McFADDEN: Under this provision, to exempt intangible personal property, the General Assembly would then have to come back and positively enact legislation exempting intangible personal property.

MR. STOUDEMIRE: All property is taxed unless it is exempt.

MR. WORKMAN: Who determines the tax to be levied on my property? It's what I return. If I don't return everything that I properly should return, then the county auditor can come back and say that you also have this property which is subject to tax. It doesn't require legislative action. Action can be taken by the county auditor in assessing your property.

MR. STOUDEMIRE: Takes legislative action not to be taxed. All auditors could. I would assume that if this were enacted the General Assembly as the first order of business, would pass a law saying household furnishings, stocks and bonds, manufacturing are hereby exempt. Those are the three thoughts that are in the Constitution now.

MR. WALSH: Under this Section A, do you say that if you tax personal property you've got to tax it the same way you tax real property?

MR. STOUDEMIRE: That's right. That was the decision the Committee made. They did not wish to classify property. The decision you made was that no property would be classified. Keep it like you've got it now, 100% assessment.

CHAIRMAN: We spent a half a day on that.

MR. McFADDEN: You say 100% assessment. That's not our present law now.

MR. WORKMAN: That's the law.

MR. STOUDEMIRE: The members of the General Assembly are going to be faced with that one before long.

MR. McLENDON: It's in the Constitution, too.

MR. McFADDEN: Doesn't the Supreme Court interpret our Constitution? It doesn't say that there's a 100% assessment on property.

MR. WORKMAN: I don't think the 100% has been presented to the Court. The inequity has been presented if you're taxing one class at a rate different from others. The relief sought was to be taxed at the same rate, but I don't think anybody has gone in there yet and said that we need to be assessed at 100%.

MR. RILEY: Governor, maybe we should suggest that Bob put in his notes a limited discussion on the intangible situation and the fact that it would call for additional legislation.

MR. STOUDEMIRE: When the Committee discussed it the first time, I think everybody went on the basis that nobody was going to tax intangibles

MR. WORKMAN: Let me make one thing clear. The decision not to have classification of personal and real property, but there is provision for exemption so long as the exemptions are to be made uniform. The question as to whether or not intangibles should be taxed is a question for legislative examination and enactment of exemption if they so choose, but there's no sanctity given intagibles in the Constitution. That's about where we stand.

MR. RILEY: I think this is covered.

CHAIRMAN: Then we go to Section E and F. Of course, you've got to have a law to state public purpose. You say that's substantially what it is.

MR. HARVEY: We couldn't come back here where we say "based upon actual value" and say "based upon such percentage of actual value as shall be established"?

MR. WORKMAN: This, in itself--"based upon" is the saving word in here because you can take the actual value as a level against which you operate, but you can say 10% or 50%.

CHAIRMAN: All right. Section E and F. That's largely a re-statement of what we have.

MR. WALSH: In Section F, I raise the question which I have raised before. I think it is somewhat answered in the Debt part. If we have no substantial change in our present county-city set-up, does this permit a county--we've enlarged the public purpose doctrine--to tax a city for something they do out in the county and give it no service from it. Take recreation, for instance. A city has a recreation program. The county says they want one and they add on top of all city residents to pay for the county program.

MR. STOUDEMIRE: This doesn't exactly give you that protection. The only protection you would have is where you issue bonds.

MR. WALSH: Where you borrow money. You may not borrow any money for something like that. That is one of the things that is creating the great financial crisis in this State.

MR. STOUDEMIRE: The sheriff is your best example, really. We have it on debt, but not for general purposes.

CHAIRMAN: We agreed that there is no real way that we could do it. Let's go on to G which has been there since 1868. This Section H is a little broader, but very worthwhile. Section I. Claims against the State. Section J. Section K. We will go on to L. We're striking out in new territory here.

MR. STOUDEMIRE: I believe in our earlier discussion that we came to the conclusion that while we put them all in one big pot, this would not prevent the General Assembly from saying, by law, that the Highway Department, from its special revenues shall pay 50 million if that's for the highway bonds. I would think that no-one would ever expect the State to levy a property tax to take care of this thing. Mr. Sinkler says that's good underwriting.

CHAIRMAN: It's strictly a bond sales provision. All right, Bonded indebtedness of counties, school districts, special districts.

MR. McLENDON: Bob, in Section M, what about school bonds, or hospital bonds, or airport bonds that are issued where there is no tax levied, no licenses collected? How does this affect a situation like that? About how much they can borrow?

MR. STOUDEMIRE: Is it pledged by full faith or is it revenue bonds? If it's revenue it's not bothered. They are under whatever unit holds title to the bonds. If the county issued for the hospital, then they're caught

within this limitation.

MR. McLENDON: School districts don't collect taxes.

CHAIRMAN: School districts do collect taxes.

MR. McLENDON: We had to borrow, I think, a half a million dollars. We simply levied a tax.

MR. WORKMAN: That's it. Don't we mean "or levied in behalf of"?

MR. STOUDEMIRE: Yes. We have to in this case. "Indebtedness in excess of the maximum amount permitted herein shall be issued only upon the approval of the qualified electors...".

CHAIRMAN: In other words,you've got to have a vote.

MR. McLENDON: Reeves Township, for instance, wants to build a$200,000 addition to its hospital. Reeves Township is collecting no taxes. They collect no licenses, but it issues $300,000 worth of bonds and then it tells the delegation to levy on Reeves Township five mills annually to retire this over a twenty or thirty year period. They've never collected any taxes.

MR. STOUDEMIRE: You would have to have a vote of the people, according to this.

MR. McLENDON: What I'm trying to find out is, from this, how do you determine how much you can borrow because up to the time they issued the bonds, they had never collected a cent.

CHAIRMAN: You can borrow any amount you want provided the people approve it. We said that the local governments ought to have some discretion and shouldn't have to go to the people on every bond issue, but if it appeared that it was going to amount to a substantial increase in taxes then the people ought to have the right to vote on it.

MR. HARVEY: We collect taxes from townships.

MR. WALSH: Your county is your unit of government.

MR. McLENDON: No. The Legislature created the Reeves Hospital District as a political subdivision of the State.

MR. RILEY: They ought to have a vote if they've never levied any taxes before.

MR. WORKMAN: The problem would probably take care of itself. When you've got a special taxing district for hospital or anything else where taxes are being levied and collected in behalf of that district, then you've got a yardstick against which you can measure. When you go into it for the first time, then you've got no taxing yardstick so then you've got to go to the people and get your vote.

MR. STOUDEMIRE: You recall now, we had some members of the Committee who didn't want to issue anything without going to a vote of the people and this is sort of a compromise stand here.

MR. HARVEY; Bob, you have got"three times the total amount of taxes collected...in the three preceding years". You haven't got the "average". You've got three times three.

MISS LEVERETTE: I think there was a difference on the part of the Committee on that.

MR. WALSH: I think we talked about this very same thing and I think we put three times.

MR. WORKMAN: What we tried to do was to build in here something that would allow the governing authorities to issue money without having to run to the people on everything.

MR. STOUDEMIRE: The Committee agreed to strike the word "average".

MR. McLENDON: That's right. That may cure my problem.

MR. STOUDEMIRE: Maybe we ought to put "three times the taxes collected in the preceding year".

MR. WORKMAN: That gives you considerably higher ratio than you've got.

MISS LEVERETTE: I don't think anybody ever voiced the thought that it would equal nine times. Seems to me like we were thinking in terms of three times---

CHAIRMAN: Let's keep it as it is with a request to Mr. Sinkler to give us his judgment on it.

MR. RILEY: He knows what they've all borrowed up to now.

MR. WORKMAN: We have, in effect, done away with reference to assessed valuation as a yardstick. We've gone to tax collections and we've done away with revenue bonds, have we not?

MR. STOUDEMIRE: No. What you have done is you have let, especially the municipalities, have a choice between a general obligation and a revenue bond which is right because everybody believes that on the same day, the same set of circumstances, an obligation bond ought to bring a little bit less interest than a revenue bond. But right now, the way the laws are, all the towns go the revenue route simply because they don't have to vote.

CHAIRMAN: O.K. Let's go to amendments.

MR. STOUDEMIRE: Gentlemen, you remember on your amendments you agreed to four things. First, keep the old fashioned small amendment. To take the article by article approach, to have the Constitutional Convention and four,to permit the General Assembly to draft a Constitution to be submitted to the voters. The Committee agreed to do away with the ratification and therefore you've got to spell out an effective date

unless the amendment does. As we see it, that would take care of changing the Governor's term of office from four to six or to write a whole new Executive Article. "Two or more amendments submitted to the voters". Now, Constitutional Convention is about the same thing that we have in the current Constitution.

MR. McLENDON: When it says "...it shall be submitted", who submits it? Who takes the initiative to submit it?

MR. HARVEY: The Secretary of State.

MR. STOUDEMIRE: Election Commission now, but we argued back over here before that really we should give this function to the Secretary of State as a constitutionally elected officer rather than to an election commission.

CHAIRMAN: Did we agree on that thirty year thing?

MR. STOUDEMIRE: Some wanted it not more than twenty years and I believe some didn't want it at all. The argument was that if the General Assembly has the right to propose a new Constitution, then certainly the people ought to have the right to vote on it. Section D. "General Assembly to propose a new Constitution." That would let you make part of it become effective this year-- I think we drafted what the Committee decided on D. Mr. Chairman, we've got this Miscellaneous. Divorces. You agreed to keep divorce like it was. Lotteries. Voted to keep in. Continuity of governmental operations. We decided to use the shorter approach of New Jersey rather than that long thing we put in the Constitution by amendment. It says the same thing, but it is much shorter. Alcoholic liquors. You agreed to keep it like it was. That's it.

MR. WORKMAN: Well, reserving all right, I'm going to serve notice that I will put in our Report my conviction that this ought to be left out as being improper matter for a Constitution. We are on a kind of dilemma in here because we've got to move from the standpoint of principle to try to divise a Constitution,as it should be divised, realizing that we are not starting from scratch so that we are bound by case law, precedent and a lot of other things we're trying to protect, but at the same time I don't think we, as a Committee, should lose sight of our obligation to try to clean this thing up as far as we can clean it up and, in this area, though it may be impossible to do anything about it, I think the statement ought to be made that there is a feeling within the Committee that this should be left out.

MR. STOUDEMIRE: I'm sorry. We've got two more hold-over items. Administrative Procedure first. We decided that the best we could do on the thing--there seemed to be most objections to "nor shall it be denied the benefit of technical assistance.." and also that a mode of procedure be prescribed by the General Assembly. We changed it around a little bit. "No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard", I believe

everybody agreed to that,"nor shall be subject to the same official for both prosecution and adjudication nor shall be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly".

MR. WALSH: I think that's good.

MR. STOUDEMIRE: Now, on this urban renewal. You recall that the amendment says that we've got it now, but the General Assembly can provide for urban renewal and so on. So if the General Assembly doesn't provide, that still could leave Spartanburg and York and perhaps Greenville out on a limb so we thought that maybe the sentence up here would do it. "Any political subdivision possessing the powers of urban renewal and slum clearance, including the right to resell or dispose of slum areas to private enterprise for private uses by a prior Cosntitutional or statutory provision may continue to exercise such authority."

MR. WALSH: What about air rights? It was submitted at two different times. Greenville defeated it, but Spartanburg passed it.

MR. STOUDEMIRE: Did you do it the same time you did the urban renewal?

MR. WALSH: No, this election.

MISS LEVERETTE: The State passed it.

MR. WALSH: I believe that something like this is probably the answer. Anybody that now has it has it and those that don't have it are going to have to get it the hard way.

MR. McFADDEN: Isn't this language here in addition to some other language?

MR. STOUDEMIRE: We said the General Assembly can do all these things.

MR. McFADDEN: The General Assembly can do all these things and this language was put on the end of it to protect Spartanburg and York.

CHAIRMAN: This really vests the rights of Spartanburg and York.

MR. STOUDEMIRE: This Article by Article thing has a major defect. What if by some fluke they approve all the amendments except the schedule?

MR. WALSH: I believe we could probably take something like this provided we also included the air rights and sub-surface rights in it.

MR. STOUDEMIRE: All right.

MISS LEVERETTE: The air rights and sub-surface rights amendment was made to the same section, wasn't it?

MR. WALSH: I believe it was.

MR. WORKMAN: Does not this air rights and sub-surface rights apply to publicly owned buildings and public land, whether or not involved in urban renewal?

MR. WALSH: Yes.

MR. WORKMAN: In other words, you can sell air rights above or below the courthouse if you wanted. Let's look to our next step.

CHAIRMAN: Bob, you are authorized to go ahead, within the framework of what we've done. Just as a precaution, first mail copies of your revised draft to each member. Give us a couple of days to go over that. If you have any objections, call Bob or Bill or me, and if it is serious enough we will call another meeting of the Committee, but we will not plan to have a meeting of the Committee until we have a public hearing which will be arranged sometime after the general distribution of the revised version.

MR. STOUDEMIRE: What shall we call it?

MR. WORKMAN: I would say, Committee Draft.

MR. STOUDEMIRE: I believe that we agreed on last time that we would stick to the A,B and C through the public hearing and then when we go to the printer, then we'll go back to 1, 2, 3, 4.

There being no further business the meeting adjourned at 4:45 p.m.

W. D. WORKMAN,Jr.
Secretary

Nettie L. Bryan
Recording Secretary