Working Paper #4

Constitutional Provisions on State Services

The provision of services by the states and the necessary regulations related thereto may be done by the General Assembly without any mention in the Constitution. Consequently, most modern constitutions treat state services very broadly and omit most details. The current reasoning is that on matters of great concern as health, welfare, education, etc., the Constitution should encourage the General Assembly to provide for these services adequately by brief statements of constitutional intent.

South Carolina has rather long provisions on some subjects, but has very little if anything to say on others. For example, the Constitution treats mental health, penal institutions, and education, but generally omits highways, airports, public health, public welfare as currently applied, and so on. Most of the provisions in the S. C. Constitution pertain to detail, rather than providing guarantees or restrictions. Perhaps, the sections on the superintendent of education and the state board of education are the only ones which have a vital effect on the current method of doing things. In so far as revision is concerned, we are fortunate in that no entrenched institutions are given constitutional status as is the independent status of university systemsin some states. Therefore, the committee should be able to restate these articles without disturbing in any serious manner any of the existing functions in the State.

Most state constitutions and modern revisions treat Education as a separate Article. This seems to be in line with the emphasis which should be given to this function. Other provisions on state services are usually grouped under some broad heading as an article or included in miscellaneous provisions. It is suggested that the Committee agree on the subjects which should be mentioned and then determine the best arrangement for listing.

ARTICLE XII

Charitable and Penal Institutions

Section 1. Institutions for care of insane and poor provided for.—Institutions for the care of the insane and the poor shall always be fostered and supported by this State, and shall be subject to such regulations as the General Assembly may enact.

See Const. 1868, XI, 1.
1914 (28) 960; 1915 (29) 104.

Section 2. Board of regents—powers.—The Governor shall, with the advice and consent of the Senate, appoint a Board of Regents, consisting of five members, whose terms of office shall be so designated that the term of one member shall expire each year, subject to the removal by the Governor for cause; which Board shall have charge of such institution or institutions as may be maintained by the State for the care of the insane. The Board of Regents shall have exclusive power to appoint and, in its discretion, remove one Superintendent thereof, and the Superintendent, who shall be a physician, shall have the power, in his discretion, to appoint and remove all other officers and employees of such institution, or institutions, subject to the approval of the Board of Regents.

1915 (29) 594; 1917 (30) 222.

Section 3. County poor.—The respective counties of this State shall make such provision as may be determined by law for all those inhabitants who by reason of age, infirmities and misfortune may have a claim upon the sympathy and aid of society.

Section 4. Directors of benevolent and penal state institutions.—The directors of the benevolent and penal State institutions which may be hereafter created shall be appointed or elected as the General Assembly may direct.

See Const. 1868, XI, 3.

Section 5. Directors of penitentiary.—The Directors and Superintendent of the Penitentiary shall be appointed or elected as the General Assembly may direct.

See Const. 1868, XI, 2.

Section 6. Convicts sentenced to hard labor.—All convicts sentenced to hard labor by any of the Courts in this State may be employed upon the public works of the State or of the Counties and upon the public highways.

Section 7. Reformatory for juvenile offenders.—Provision may be made by the General Assembly for the establishment and maintenance by the State of a reformatory for juvenile offenders separate and apart from hardened criminals.

See Const. 1868, X, 8.

Section 8. Vacancies.—The Governor shall have power to fill all vacancies that may occur in the offices aforesaid, except where otherwise provided for, with the power of removal until the next session of the General Assembly and until a successor or successors shall be appointed and confirmed.

See Const. 1868, XI, 4.

Section 9. Control of Convicts.—The Penitentiary and the convicts thereto sentenced shall forever be under the supervision and control of officers employed by the State; and in case any convicts are hired or farmed out, as may be provided by law, their maintenance, support, medical attendance and discipline shall be under the direction of officers detailed for those duties by the authorities of the Penitentiary.

This article is concerned with three things: Institutions for mental patients; provision for the poor; and institutions for criminals and delinquents. Over-all the Article reveals the concern of the delegates to the 1895 Convention for the mentally ill, the poor, and people involved in crimes. The Article provides a mandate for the General Assembly to take action in areas in which it can act under the reserve powers of the State unless forbidden to do so. The Article sets out to insure that juveniles, prisoners, and the mentally ill will be humanely treated. For some reason, major responsibility for control over instututions for the mentally ill is placed in the Governor while the General Assembly is assigned the other two areas.

Looking at the Article as a whole, the language it uses is out of date and some of the provisions could prove embarrassing, especially if a court were to apply a strict interpretation of the Constitution. The present mental health commission gets around the constitutional provision by stating that it is also the Board of Regents and the constitutional language about directors

and the superintendent of the penitentiary present a similar problem since the laws now recognize a Board of Corrections in charge of correctional institutions. Similarly, "reformatory for juvenile offenders" is no longer the wording recommended.

None of the modern state constitutions go into detail concerning health, penal institutions, mental health, etc. Most of the older ones do have some detail, but not to the degree that South Carolina uses in Article XII. Therefore, it appears to be in order that only a brief mention be made of such functions, primarily to give emphasis to the programs. As you know, the General Assembly has the inherent right to enact laws on these subjects unless restricted. These functions are areas where the General Assembly has to be trusted to do that which is necessary and wise and for the welfare of the citizens. Unless there are some areas where the Committee feels that constitutional protections or guarantees are needed, then a general statement should be adequate. The developments in the fields of mental health, rehabilitation of prisoners, mental retardation, and caring for poor and aged change so fast and from decade to decade until detailed constitutional provisions can hardly apply. It would seem wiser to provide for these matters generally and let the amendment process to be used if abuses in later years demand such action.

You may wish to note that in 1937 Article III, section 32 was amended so that the restrictions on state pensions would not interfere with welfare payments. This amendment spelled out the welfare program in great detail, so much so that the entire section was removed from the Constitution by a 1945 amendment.

Before deciding on the nature of this Article, the Committee should be aware that some groups in the country advocate state constitutional provisions which insures one the right to receive public welfare, that the civil rights of the mentally retarded should be protected, and that prisoners should be

protected by statements which require rehabilitation. These things are listed here only to show the Committee the type of concern which could be included in a Constitution and to open the way for the Committee to consider others and not overlook vital areas.

In continuing the concern shown by the delegates to the 1895 Constitution, the Committee could propose an Article on state services similar to the following based in general upon the recommendation of the Kentucky Commission:

The health, welfare, and safety of the lives and property of the people of this state and the conservation of its natural resources, ~~including but not limited to wildlife, soil, minerals, forests, water and pure air,~~ are matters of public concern. The General Assembly shall establish by law appropriate agencies to provide for these matters of public concern and fix the respective functions, powers, and duties of such agencies.

The General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates.

It may not be wise to follow the Kentucky procedure. The South Carolina Constitution does not contain sections on natural resources, wildlife, etc. and it may be best policy to let this situation continue.

At this point, it appears that the best procedure would be to agree upon the functions of state government which may need to be mentioned in the Constitution and the type of statement needed. All of these statements then could be compiled to form a new brief section on governmental functions. Other matters will come up later, such as boards of health and some other items in the legislative article. Education is usually given special emphasis and this follows our history as well as the current interest in the subject.

ARTICLE XI

Education

Section 1. Superintendent of education.—The supervision of public instruction shall be vested in a State Superintendent of Education, who shall be elected for the term of two years by the qualified electors of the State, in such manner and at such time as the other State officers are elected; his powers, duties and compensation shall be defined by the General Assembly.

See Const. 1868, X, 1.

As you well know, the constitutional amendment having the superintendent of education appointed was narrowly defeated. Based on the vote, one could just as well argue the case either way. Some people feel that some of the local struggles in the appointing of State Board members during this general period influenced a number of voters to retain the present method of election. Of course, this is conjecture.

The Committee may have to consider the question of the superintendent along with Article IV, section 24 which provides for the constitutional officers and which was the section sought to be amended in 1964 rather than Article XI, section 1.

In considering the selecting of the Superintendent, several principles come to light. 1) Should the Superintendent be elected? 2) If he should not be elected, then who should appoint? The Board of Education as was proposed in the amendment accompanying the question on election and which did receive a majority vote is one possibility. The Governor is another, or the Board could make recommendations to the Governor. 3) Is the office a constitutional one or should it be left to the General Assembly?

No conclusive evidence can be drawn from the practice in other states. In many states the Superintendent is popularly elected; in others he is selected by the Board; in some he is appointed by the Governor; the majority of states make the superintendent along with the Board a constitutional question, but some do not.

See the table on the next page.

In Maryland, the superintendent and the board are regulated by law and the proposed draft of the Constitution recommends that this practice continue; the Alaska Constitution does not mention either the superintendent or the boards; and neither does the N. J. Constitution which limits the state departments to twenty under the control of the Governor with state senate confirmation of appointments.

It is suggested that the Committee make a tentative conclusion on the Superintendent of Education, subject to further review and consideration when constitutional officers are considered as a part of the Executive Article. The selection method does bear a direct relationship to responsibilities which may be assigned to the Governor.

Section 2. State board of education.—There shall be a State Board of Education composed of one member from each of the judicial circuits of the State. The members shall be elected by the legislative delegations of the several counties within each circuit for terms and with such powers and duties as may be provided by law, and shall be rotated among the several counties.

See Const. 1868, X, 2; 1963 (53) 75.

This section was amended in 1963 to place the selection of the board in the General Assembly, using judicial districts, and removing the board from the Governor. This amendment, in effect, doubled the size of the board. Most of the same questions raised in the prior discussion concerning the Superintendent of Education also apply here. Namely, shall the board continue as a constitutional board? How shall it be selected? Shall it be left to the control of the General Assembly but by law rather than constitution? See the table on page 8.

TABLE 7

STATE BOARDS OF EDUCATION AND CHIEF SCHOOL OFFICERS FOR THE COMMON SCHOOL SYSTEMS, 1947(a)–1965(b)*

State	Chief method of selecting state board: Elected by people 1947	Elected by people 1965	Appointed by Governor 1947	Appointed by Governor 1965	Other 1947	Other 1965	Chief method of selecting chief state school officer: Elected by people 1947	Elected by people 1965	Appointed by state board 1947	Appointed by state board 1965	Appointed by Governor 1947	Appointed by Governor 1965
Alabama	....	....	★	★	....	....	★	★	....	....	....	....
Alaska	....	....	★	★	....	....	....	....	★	....	....	....
Arizona	....	....	....	★	★	....	★	★	....	....	....	....
Arkansas	....	....	★	★	....	....	....	....	★	★	....	....
California	....	....	★	★	....	....	★	★	....	....	....	....
Colorado	....	★	....	....	★	....	★	....	....	★	....	....
Connecticut	....	....	★	★	....	....	....	....	★	★	....	....
Delaware	....	....	★	★	....	....	....	....	★	★	....	....
Florida	....	....	....	....	★	★	★	★	....	....	....	....
Georgia	....	....	★	★	....	....	★	★	....	....	....	....
Hawaii	....	....	★	★	....	....	....	....	....	★	★	....
Idaho	....	....	★	★	....	....	★	★	....	....	....	....
Illinois	No state board						★	★	....	....	....	....
Indiana	....	....	★	★	....	....	★	★	....	....	....	....
Iowa(c)	....	....	....	....	....	★	★	....	....	★	....	....
Kansas	....	....	★	★	....	....	★	★	....	....	....	....
Kentucky	....	....	★	★	....	....	★	★	....	....	....	....
Louisiana	★	★	....	....	....	....	★	★	....	....	....	....
Maine(c)	....	....	....	★	....	....	....	....	....	★	★	....
Maryland	....	....	★	★	....	....	....	....	★	★	....	....
Massachusetts	....	....	★	★	....	....	....	....	★	★	....	....
Michigan	★	★	....	....	....	....	★	....	....	★	....	....
Minnesota	....	....	★	★	....	....	....	....	★	★	....	....
Mississippi	....	....	....	....	★	★	★	★	....	....	....	....
Missouri	....	....	★	★	....	....	....	....	★	★	....	....
Montana	....	....	★	★	....	....	★	★	....	....	....	....
Nebraska(c)	....	★	....	....	....	....	★	....	....	★	....	....
Nevada	★	★	....	....	....	....	★	....	....	★	....	....
New Hampshire	....	....	★	★	....	....	....	....	★	★	....	....
New Jersey	....	....	★	★	....	....	....	....	....	....	★	....
New Mexico	....	★	★	....	....	....	★	....	....	★	....	....
New York	....	....	....	....	★	★	....	....	★	★	....	....
North Carolina	....	....	★	★	....	....	★	★	....	....	....	....
North Dakota(c)	....	....	....	★	....	....	★	★	....	....	....	....
Ohio(c)	....	★	....	....	....	....	....	....	....	★	★	....
Oklahoma	....	....	★	★	....	....	★	★	....	....	....	....
Oregon	....	....	★	★	....	....	★	★	....	....	....	....
Pennsylvania	....	....	★	★	....	....	....	....	....	....	★	....
Rhode Island(c)	....	....	....	★	....	....	....	....	....	★	★	....
South Carolina	....	....	★	....	....	★	★	★	....	....	....	....
South Dakota(c)	....	....	....	★	....	....	★	★	....	....	....	....
Tennessee	....	....	★	★	....	....	....	....	....	....	★	....
Texas	....	★	★	....	....	....	★	....	....	★	....	....
Utah	....	★	....	....	★	....	★	....	....	★	....	....
Vermont	....	....	★	★	....	....	....	....	★	★	....	....
Virginia	....	....	★	★	....	....	....	....	....	....	★	....
Washington	....	....	....	....	★	★	★	★	....	....	....	....
West Virginia	....	....	★	★	....	....	★	....	....	★	....	....
Wisconsin	No state board						★	★	....	....	....	....
Wyoming	....	....	....	....	★	★	★	★	....	....	....	....
Total	3	9	30	32	8	7	31	22	11	23	8	1

*Sources: (a) Adapted from Council of State Governments, *The Forty-Eight State School Systems*, 1949, Tables 11 and 12, pp. 185 and 186. Data for Alaska and Hawaii added.

(b) Data provided by Dr. Robert F. Will, U.S. Department of Health, Education, and Welfare, U.S. Office of Education, State School Systems Section.

(c) No state board in 1947.

In most states when the Superintendent of Education is made a constitutional question, the Board of Education is also normally included in the constitution. The two questions go hand in hand.

If the Board is retained in the Constitution then careful thought should be given to the manner of selection and the districts from which board members are to be selected. The current method of selecting from judicial districts may be too restrictive, especially in light of Reynolds v. Sims. Already many people are raising the question if all areas of representation, even for administrative boards, may not eventually come under the reapportionment decisions. Judicial circuits may well serve court functions, but it does not necessarily follow that such districts are also the ones needed for education. It is suggested that if the Board of Education is retained as a constitutional board that the General Assembly shall provide for the selection of board members. Under such a clause, judicial districts could be used or some other type, all members could be selected at large or a combination of at large and districts and the size of the board could be adjusted to meet the needs of the future whatever such needs may be.

The decision on the board also will have to tie in with decisions which are to be made on the Executive Article.

Section 3. School officers.—The General Assembly shall make provision for the election or appointment of all other necessary school officers, and shall define their qualifications, powers, duties, compensation and terms of office.

See Const. 1868, X, 2.

Section 4. Salaries of school officers and county treasurer.—The salaries of the State and County school officers and compensation of County Treasurers for collecting and disbursing school moneys shall not be paid out of the school funds, but shall be otherwise provided for by the General Assembly.

Are not these two sections obsolete at least as stated? If some of the statements are needed, then should not there be a general statement on the role

of the General Assembly to provide for public schools?

Walt read 34 on schools Art IX

Section 5. Free public schools—school districts.—(*Eliminated*).

1915 (29) 598; 1917 (29) 669; 1918 (31) 726; 1919 (31) 288; 1922 (32) 1544; 1923 (33) 6; 1928 (35) 1693; 1929 (36) 231; 1930 (36) 1215; 1930 (36) 1407; 1931 (37) 101; 1931 (37) 106; 1936 (39) 1422; 1937 (40) 82; 1944 (43) 1576; 1945 (44) 11; 1948 (45) 2283; 1948 (45) 2391; 1948 (45) 2510; 1949 (46) 23; 1949 (46) 42; 1949 (46) 70; 1949 (46) 1475; 1950 (46) 2671; 1951 (47) 14; 1951 (47) 25; 1952 (47) 2223; 1954 (48) 1695.

See Const. 1868, IX, 3.

As you know Section 5 originally regulated the size of school districts and this caused most of the amendments which have been made. Since the schools have been able to solve the district size question since 1954 without a constitutional mandate or restriction, it appears that the constitution should continue on this basis and leave the matter of districts to the General Assembly.

As you also know, this section was repealed because of the requirement of free public schools. Again, then the question arises as to the need of this statement as a constitutional mandate. Almost all constitutions do give the General Assembly a mandate on public education and almost all require such schools to be free. With the importance being placed on education today, consideration should be given to the wisdom of restating the historic position on free schools. The 1895 Constitution stated it thusly: "The General Assembly shall provide for a liberal system of free public schools for all children between the ages of six and twenty-one years, ..." The Alaska Constitution states: "The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions."

The Model uses this procedure: "The legislature shall provide for the maintenance and support of a system of free public schools open to all children in the state, and shall establish, organize and support such other public educational institutions, including public institutions of higher learning, as may

be desirable."

Note that these sections provide a means of insuring both public and higher education in a brief manner. Since South Carolina has never given higher education a special independent status as some states, such an expression on higher education is probably all that is needed.

Section 6. Enrollment—trustees—poll tax—supplementary tax.—The General Assembly shall define "enrollment." Not less than three trustees for each school district shall be selected from the qualified voters and taxpayers therein, in such manner and for such terms as the General Assembly may determine, except in cases of special school districts now existing, where the provisions of law now governing the same shall remain until changed by the General Assembly: *Provided*, The manner of the selection of said trustees need not be uniform throughout the State.

There shall be assessed on all taxable polls in the State between the ages of twenty-one and sixty years (excepting Confederate soldiers above the age of fifty years), an annual tax of one dollar on each poll the proceeds of which tax shall be expended for school purposes in the several school districts in which it is collected.

Any school district may by the authority of the General Assembly levy an additional tax for the support of its schools.

See Const. 1868, X, 5.
1938 (40) 1912; 1939 (41) 8.

Should not this entire section be eliminated?

The General Assembly is free to define enrollment without a constitutional mandate.

The last sentence of the first paragraph stating that the selection of trustees need not be uniform throughout the State essentially cancels the complete statement on trustees as a practical matter.

Do poll taxes bring in enough money to pay for the administrative costs and would not better tax collections result if treasurers were allowed to use the time required for other purposes?

The General Assembly may allow districts to impose taxes without the mandate given in the last statement.

Note that this section has been amended only once -- to remove the constitutional requirement of a mandatory state property tax for schools.

Section 7. Separate schools.—Separate schools shall be provided for children of the white and colored races, and no child of either race shall ever be permitted to attend a school provided for children of the other race.

See Const. 1868, X, 10.

The impact of this section has been nullified by federal courts.

Section 8. Clemson Agricultural College—South Carolina School for the Deaf and Blind—University of South Carolina—Winthrop Normal and Industrial College—Colored Normal, Industrial, Agricultural and Mechanical College.—The General Assembly may provide for the maintenance of Clemson Agricultural College, South Carolina School for the Deaf and Blind, located at Cedar Springs, the University of South Carolina, and the Winthrop Normal and Industrial College, a branch thereof, as now established by law, and may create scholarships therein; the proceeds realized from the land scrip given by the Act of Congress passed the second day of July, in the year eighteen hundred and sixty-two, for the support of an agricultural college, and any lands or funds which have heretofore been or may hereafter be given or appropriated for educational purposes by the Congress of the United States, shall be applied as directed in the Acts appropriating the same: *Provided*, That the General Assembly shall, as soon as practicable, wholly separate Claflin College from Claflin University, and provide for a separate corps of professors and instructors therein, representation to be given to men and women of the negro race; and it shall be the Colored Normal, Industrial, Agricultural, and Mechanical College of this State.

See Const. 1868, X, 9.
1914 (28) 947; 1915 (29) 64.

It appears that the General Assembly has been making appropriations to many institutions which are not constitutionally in existence.

Seriously, this section seems to do nothing but perpetuate outdated names and should it not be dropped? Higher education may be covered in a general

statement in one section on the support of education generally.

Section 9. Property or credit of State shall not benefit sectarian institutions.—The property or credit of the State of South Carolina, or of any county, city, town, township, school district, or other subdivision of the said State, or any public money, from whatever source derived, shall not, by gift, donation, loan, contract, appropriation, or otherwise, be used, directly or indirectly, in aid or maintenance of any college, school, hospital, orphan house, or other institution, society or organization, of whatever kind, which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization.

-- This section must be tied in with the Article on Finance and Taxation and the Article on religious freedom.

Note that the restrictions in this section apply to religious institutions and not to other private institutions. If this section as now written would be strictly enforced, it could make almost any type of state assistance to religious schools essentially impossible, even textbooks and transportation for students.

Committee members will recall that the section in the Declaration of Rights on religious freedom is essentially the same statement as contained in the U.S. Constitution. Committee members also are aware of the general types of assistance which the federal government has been able and is now able to give to religious and private schools and institutions. Therefore it seems logical that the S. C. provision in the Declaration of Rights would receive a similar interpretation and many things not permitted at present would be allowed. This section needs very careful thought, based on how the committee members feel about the use of state funds for sectarian and private schools.

Most state constitutions do have some type of regulation which generally restricts the use of state funds for religious schools beyond that which comes under the general clause on religious freedom. Some constitutions spell out restrictions, but then permit certain types of exceptions. The constitution of Maryland, however, does not prevent the use of funds in this manner and the Draft Commission agreed that this practice should be allowed to continue.

Note carefully that the S. C. provision prohibits use of funds both directly and indirectly. Furthermore, note that aid cannot be done by contract. This is done in some states.

Most of the private higher institutions of learning in the state are church associated rather than being simply private. Of course, there are a number of public schools which are private and do not involve a religious question.

The answer to the use of tax funds may lie in finding the opinion of the Committee on such questions as the following: Do we wish to prohibit aid which benefits the student directly such as free lunches, textbooks, transportation, scholarship grants, loans, special types of or remedial education? Do we wish to prohibit an outright grant or loan to a religious institution or a private institution? Do we wish to prohibit the state in contracting for a service with a private or religious institution? Do we favor total separation of church and state? Do we wish to make a distinction between religious institutions and private institutions? Do we wish to insure certain types of assistance and be specific or do we prefer general terms, leaving the exact interpretation to the courts? Is there a solution? Perhaps the answer lies in the direction of the sentence used in the Alaska Constitution. This Constitution states: "No money shall be paid from public funds for the direct benefit of any religious or other private educational institution."

Explain Credit Textbooks and Equipment to Students and the Students

Section 10. Gifts for educational purposes.—All gifts of every kind for educational purposes, if accepted by the General Assembly, shall be applied and used for the purposes designated by the giver, unless the same be in conflict with the provisions of this Constitution.

If the state accepts such a gift, it would do this anyway. This section seems to serve no useful purpose.

Section 11. Gifts to State—assets of estates or co-partnerships—direct tax—state school fund.—All gifts to the State where the purpose is not designated, all escheated property, the net assets or funds of all estates or co-partnerships in the hands of the Courts of the State where there have been no claimants for the same within the last seventy years, and other money coming into the Treasury of the State by reason of the twelfth Section of an Act entitled "An Act to provide a mode of distribution of the moneys as direct tax from the citizens of this State by the United States in trust to the State of South Carolina," approved the twenty-fourth day of December, in the year eighteen hundred and ninety-one, together with such other means as the General Assembly may provide, shall be securely invested as the State School Fund and the annual income thereof shall be apportioned by the General Assembly for the purpose of maintaining the public schools.

This section seems to have outlived its usefulness. The General Assembly, by law, can direct the use of such assets as may accrue to the State. The State School Fund as used in this constitutional sense has not been used in years.

Section 12. Income from sale or licenses for sale of liquors.—All the net income to be derived by the State from the sale or license for the sale of spirituous, malt, vinous and intoxicating liquors and beverages, not including so much thereof as is now or may hereafter be allowed by law to go to the Counties and municipal corporations of the State, shall be applied annually in aid of the supplementary taxes provided for in the sixth Section of this Article; and if after said application there should be a surplus, it shall be devoted to public school purposes, and apportioned as the General Assembly may determine: *Provided, however,* That the said supplementary taxes shall only be levied when the net income aforesaid from the sale or license for the sale of alcoholic liquors or beverages are not sufficient to meet and equalize the deficiencies for which the said supplementary taxes are provided.

By way of explanation and not apology, I am not at all sure of the meaning of this section. The clause "applied annually in aid of the supplementary taxes provided for in the sixth Section of this Article" appears to be something added to the poll tax. As you may or may not realize, this section is from the original constitution and has not been amended.

Unless the alcoholic liquors controversy dictates otherwise, this section could easily be omitted from the Constitution. Since funds needed for education far exceed the earmarked sources, the importance of the section is largely nullified. If the major thought of the section is retained would a statement similar to the following be adequate: "After allocations authorized by law for municipalities and counties, the net income from taxation of alcoholic liquors, wines, and etc. shall be used for public school purposes?"

ARTICLE IX

Corporations

Section 1. Corporation defined.—The term corporation as used in this Article includes all associations and joint stock companies having powers and privileges not possessed by individuals or partnerships, and excludes municipal corporations.

Section 2. Charter of incorporation.—No charter of incorporation shall be granted, changed or amended by special law, except in the case of such charitable, educational, penal or reformatory corporations as may be under the control of the State, or may be provided for in this Constitution, but the General Assembly shall provide by general laws for changing or amending existing charters, and for the organization of all corporations hereafter to be created, and any such law so passed, as well as all charters now existing or hereafter created, shall be subject to future repeal or alteration: *Provided,* That the General Assembly may by a two-thirds vote of each House on a concurrent resolution allow a Bill for a special charter to be introduced, and when so introduced may pass the same as other Bills.

See Const. 1868, XII, 1.

Section 3. Transporting and transmitting corporations taxed as such—common law liability.—All railroad, express, canal and other corporations engaged in transportation for hire and all telegraph and other corporations engaged in the business of transmitting intelligence for hire are common carriers in their respective line of business, and are subject to liability and taxation as such. It shall be unlawful for any such corporation to make any contract relieving it of its common law liability or limiting the same, in reference to the carriage of passengers.

Section 4. Agent of corporation—office.—Every corporation organized or doing business in this State, other than religious, educational or benevolent association, shall have and maintain at least one agent in this State upon whom process may be served, and at least one public office for the transaction of its business: *Provided,* This Section shall not apply to mercantile corporations: *Provided,* That nothing contained in this Section shall be construed to prohibit the General Assembly from providing for the service of process on any agent of a corporation so as to bind such corporation.

Section 5. Discrimination in charges.—No discrimination in charges or facilities for transportation of the same classes of freight or passengers, or for the transmission of intelligence within this State, or coming from or going to any other State, shall be made by any railroad or other transportation or transmission company between places or persons. Persons and property transported by any railroad, or any other transportation or transmission company or corporation, shall be delivered at any station, landing or port at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, landing or port. Excursion and commutation tickets may be issued at special rates. This Section shall not prevent the Railroad Commission from making such competitive rates as shall, in their judgment, be just and equitable between the Railroads and the public, at all Junctional and Competitive points, or at points where water competition controls the traffic, or at points where the competition of points located in other States may make necessary the prescribing of different rates for the protection of the commerce of this State.

See art. IX, section 3, and notes thereto.

Section 6. Transportation company may connect or cross lines of another.—Any railroad or other transportation corporation, and any telegraph or other transmitting corporation, organized under the laws of this State, shall have the right to connect its roads or lines, at the State line, with those in other States, and shall have the right to intersect with or cross any other railroad, street railway, transportation road or transmitting line, and shall each receive and transport the freight, passengers, cars (loaded or empty) and messages delivered to it by another without delay or discrimination.

Section 7. Consolidation of stock with competing line—jury may decide whether lines are parallel or competing.—No railroad, or other transportation company, and no telegraph or other transmitting corporation, or the lessees, purchasers or managers of any such corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control, any other railroad or other transportation, telegraph or other transmitting company owning or having under its control a parallel or competing line; and the question whether railroads or other transportation, telegraph or other transmitting companies are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil causes.

Section 8. No foreign corporation can build or operate a railroad in this State—no general or special law for foreign corporation, except on conditions.—The General Assembly shall not grant to any foreign corporation or association a license to build, operate or lease any railroad in this State; but in all cases where a railroad is to be built or operated, or is now being operated, in this State, and the same shall be partly in this State and partly in another State, or in other States, the owners or projectors thereof shall first become incorporated under the laws of this State; nor shall any foreign corporation or association lease or operate any railroad in this State, or purchase the same or any interest therein.

Consolidation of any railroad lines and corporations in this State with others shall be allowed only where the consolidated company shall become a domestic corporation of this State. No general or special law shall ever be passed for the benefit of any foreign corporation operating a railroad under any existing license of this State or under any existing lease, and no grant of any right or privilege and no exemption from any burden shall be made to any such foreign corporation, except upon the condition that the owners or stockholders thereof shall first organize a corporation in this State under the laws thereof, and shall thereafter operate and manage the same and the business thereof under said domestic charter.

Section 9. Banks.—The General Assembly shall have no power to grant any special charter for banking purposes, but corporations or associations may be formed for such purposes, under general laws, with such privileges, powers and limitations, not inconsistent with this Constitution, as it may deem proper. The General Assembly shall provide by law for the thorough examination and inspection of all banking and fiscal corporations of this State.

See Const. 1868, XII, 6.

Section 10. Stock issued for money or labor.—Stock or bonds shall not be issued by any corporation save for labor done, or money or property actually received or subscribed; and all fictitious increase of stock or indebtedness shall be void.

Section 11. Election of officers of corporations.—The General Assembly shall provide by law for the election of directors, trustees or managers of all corporations so that each stockholder shall be allowed to cast, in person or by proxy, as many votes as the number of shares he owns multiplied by the number of directors, trustees or managers to be elected, and the same to be cast for any one candidate or to be distributed among two or more candidates.

Section 12. Business of corporations.—Corporations shall not engage in any business except that specifically authorized by their charters or necessarily incident thereto.

Section 13. Trusts, combinations, etc.—The General Assembly shall enact laws to prevent all trust, combinations, contracts and agreements against the public welfare; and to prevent abuses, unjust discriminations and extortion in all charges of transporting and transmitting companies; and shall pass laws for the supervision and regulation of such companies by Commission or otherwise, and shall provide adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their franchises.

Section 14. The public service commission.—A commission is hereby established to be known as "the Railroad Commission," which shall be composed of not less than three members, whose powers over all transporting and transmitting corporations, and duties, manner of election and term of office shall be regulated by law; and until otherwise provided by law the said commissioners shall have the same powers and jurisdiction, perform the same duties and receive the same compensation as now conferred, prescribed and allowed by law to the existing railroad commissioners: *Provided*, That the members thereof shall be elected at the expiration of the terms of the present Railroad Commissioners, who are hereby continued in office for the terms for which they were elected. *Provided*, That upon the adoption and ratification of this amendment the said Commission shall be known as The Public Service Commission.

1934 (38) 1629; 1935 (39) 25.

Section 15. Rights and remedies of railroad employees.—Every employee of any railroad corporation shall have the same rights and remedies for any injury suffered by him from the acts or omissions of said corporation or its employees as are allowed by law to other persons not employees, when the injury results from the negligence of a superior agent or officer, or of a person having a right to control or direct the services of a party injured, and also when the injury results from the negligence of a fellow servant engaged in another department of labor from that of the party injured, or of a fellow servant on another train of cars, or one engaged about a different piece of work. Knowledge by any employee injured of the defective or unsafe character or condition of any machinery, ways or appliances shall be no defence to an action for injury caused thereby, except as to conductors or engineers in charge of dangerous or unsafe cars or engines voluntarily operated by them. When death ensues from any injury to employees, the legal or personal respresentatives of the person injured shall have the same right and remedies as are allowed by law to such representatives of other persons. Any contract or agreement, expressed or implied, made by any employee to waive the benefit of this Section shall be null and void; and this Section shall not be construed to deprive any employee of a corporation, or his legal or personal representative, of any remedy or right that he now has by the law of the land. The General Assembly may extend the remedies herein provided for to any other class of employees.

Section 16. Existing charters.—All existing charters or grants of corporate franchise under which organizations have not in good faith taken place at the adoption of this Constitution shall be subject to the provisions of this Article.

Section 17. Laws for benefit of corporation passed only on conditions.—The General Assembly shall never remit the forfeiture of the franchise of any corporation now chartered, nor alter nor amend the charter thereof, nor pass any general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter and franchise subject to the provisions of this Constitution, and the acceptance by any corporation of any provision of any such laws or the taking of any benefit or advantage from the same shall be conclusively held an agreement by such corporation to hold its charter and franchises under the provisions of this Article.

Section 18. Liability of stockholders.—The stockholders of all insolvent corporations shall be individually liable to the creditors thereof only to the extent of the amount remaining due to the corporation upon the stock owned by them.

See Const. 1868, XII, 4.
1934 (38) 1628; 1935 (39) 35.

Section 19. Corporations cannot do act prohibited through controlling interest in other corporations.—Nothing prohibited in this Article shall be permitted to be done by any corporation or company, persons or person, either for its or their own benefit or otherwise, by its or their holding or controlling in its or their own name or otherwise, or in the name of any other person or persons, or other corporation or company whatsoever, a majority of the capital stock, or of bonds having voting power, of any railroad or transportation company or corporation created by or existing under the laws of this State, or doing business within this State.

Section 20. Right-of-way.—No right-of-way shall be appropriated to the use of any corporation until full compensation therefor shall be first made to the owner or secured by a deposit of money, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury of twelve men, in a court of record, as shall be prescribed by law.

See Const. 1868, XII, 3.

Section 21. Provisions not self-executing.—The General Assembly shall enforce the provisions of this Article by appropriate legislation.

Frankly, the staff consultant can never recall reading anything in this Article except the provision on the public service commission until this study was under way. Reading the Article brings out certain factors:

1. Transportation and especially railroads received the special attention of the delegates.

2. If the business was located out of the state, it also received particular treatment.

3. Although the sections are long and detailed, the last section places most of responsibility in the hands of the General Assembly.

In studying the annotations to the section in the Constitution, it is clearly obvious, except for a case or so pertaining to the Public Service Commission, there are no recent cases cited. This may indicate its general ineffectiveness.

4. Is a public service commission a constitutional or statutory issue?

In searching for a solution to the problems raised in this Article, the consultant called upon Mr. Charles Knowlton, one of the most able corporation attorneys in the state. Mr. Knowlton not only prepared a detailed, general letter on the subject, but sent his comments on each section. Further, he offers his service for further detailed investigations if the Committee so desires.

Mr. Knowlton's letter is attached as pages 22, 23 and 24.

His comment about each section of Article IX is given on pages 25, 26, 27 and 28.

The Model Constitution makes no reference whatsoever to corporations or businesses. The proposed Maryland Draft makes no reference to corporations or businesses. Kentucky has a provision on corporations very similar in its approach and detail to the South Carolina Article. The proposed Kentucky Constitution, however, deleted most of the existing provisions and suggested a short article on the subject. Three of the sections apply to matters which are now in the South Carolina Constitution. These sections are reproduced below. A section on public warehouses and the amount of land which may be owned by a corporation have no similar constitutional history in S. C.

"1. The General Assembly shall provide for appropriate regulation of common carriers and public utilities as and to the extent required by the public interest."

"2. (1) The General Assembly shall provide by general law for the formation, organization, and regulation of corporations and prescribe their powers, rights, duties and liabilities, and the powers, rights, duties and liabilities of their officers and stockholders or members. The word "corporation" as used in this Constitution shall include joint stock companies and associations."

"(3) No corporation shall lease or alienate any franchise so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges."

"(4) In all elections for directors or managers of any corporation, each shareholder shall have the right to cast as many votes in the aggregate as he shall be entitled to vote in said company under its charter, multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by

proxy, for one candidate, or distribute such votes among two or more candidates, and such directors or managers shall not be elected in any other manner."

The Committee perhaps should decide whether the Article should be left out entirely or an approach similar to the one proposed in Kentucky should be used.

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ARTICLE XIII

MILITIA

Before getting into the sections of this Article, it may be useful to point out that almost all of the newer constitutions treat the subject of the militia in much less detail than does South Carolina. There are two approaches: one to include the provision in the section on the Governor; the other, to have a separate article as we do now.

Section 1. Militia.—The militia of this State shall consist of all able-bodied ~~male~~ citizens of the State between the ages of eighteen and forty-five years, except such persons as are now or may be exempted by the laws of the United States or this State, or who from religious scruples may be averse to bearing arms, and shall be organized, officered, armed, equipped and disciplined as the General Assembly may by law direct.

See Const. 1868, XIII, 1.

See section one of the attached article from the Adjutant General which indicates the militia is more than men 18 through 45 years of age. Most states recognize that there is a military force which can be used by the Governor and leave other matters to the General Assembly. It would be difficult to word a section to cover all situations which may change over the years.

Section 2. When exempt from arrest.—The volunteer and militia forces shall (except for treason, felony and breach of the peace) be exempt from arrest by warrant or other process while in active service or attending muster ~~or the election of officers,~~ or while going to or returning from either of the same.

This section could remain as it is if thought wise. Note that the exception for treason, felony, breach of the peace does not exclude very much.

The Adjustant General in paragraph 2 of his letter has a different wording on the exemption from arrest. He suggests "shall be exempt from arrest by warrant or other process while in active State service or while going to or returning from duty stations." Would this statement prevent an arrest for murder? If a statement is retained, is there any good reason to change the historic wording as used in section 2?

Section 3. Governor may call out.—~~The Governor~~ shall have the power to call out ~~the volunteer~~ and militia forces, ~~either or both,~~ to execute the laws, repel invasions, suppress insurrections and preserve the public peace.

See Const. 1868, XIII, 2.

This is a standard statement, only some change may be needed in the phrase "volunteer and military forces." See later discussion for proposed wording.

see p. 36

Section 4. Adjutant and inspector general—staff officers.—There shall ~~be an Adjutant and Inspector General elected by the qualified electors of~~ the State at the same time and in the same manner as other State officers, who shall rank as Brigadier General, and whose duties and compensation shall be prescribed by law. ~~The~~ Governor ~~shall, by and with the~~ advice ~~and consent of the Senate,~~ appoint ~~such other staff officers as~~ the General Assembly may ~~direct.~~

See Const. 1868, XIII, 3.

see p. 36

This section is outdated in a number of ways. The official is now called simply adjutant general and the word "inspector" is obsolete. The rank no longer holds because the commanding officer is now a major general. South Carolina is the only state which has its adjutant general popularly elected. In other states, except Vermont where the General Assembly elects, the Adjutant General is selected by the Governor, most often the appointment is approved by the Senate. This situation could be solved by revising the last sentence in this section.

Note in the attached letter from the Adjutant General that he proposes a system whereby the Governor appoints. His list of qualifications appear to be too detailed for a constitutional provision. See later discussion for a proposed statement on these questions.

> **Section 5. Pensions.**—The General Assembly is hereby empowered and required, at its first session after the adoption of this Constitution, to provide such proper and liberal legislation as will guarantee and secure an annual pension to every indigent or disabled Confederate soldier and sailor of this State and of the late Confederate States who are citizens of this State, and also to the indigent widows of Confederate soldiers and sailors.

This statement has outlived its usefulness. If any widows are still qualified, the General Assembly could provide for such pensions without constitutional authority.

The Committee members may wish to approach the subject of the Militia in a manner as other states have done. The following are some examples:

New Jersey simply states this: "He (the governor) shall be the Commander-in-Chief of all the military and naval forces of the State." Then in the Declaration of Rights it is stated that the military shall be in strict subordination to the civil power.

Alaska: "The governor is commander-in-chief of the armed forces of the State. He may call out these forces to execute the laws, suppress or prevent insurrection or lawless violence, or repeal invasion. The governor, as provided by law, shall appoint all general and flag officers of the armed forces of the State subject to confirmation by a majority of the members of the legislature in joint session. He shall appoint and commission all other officers."

The Maryland Draft wraps it up nicely: "The General Assembly may provide by law for a militia. The governor shall be its commander-in-chief and shall appoint

its officers. The governor may call out the militia to repel invasions, suppress insurrections, and enforce the execution of the laws. The military power of the State shall be and remain subject to civil control at all times, and only members of the militia when in actual service may be subject to trial by a military court of this State."

The Kentucky Draft states: "The General Assembly may provide for an organized militia. Such organization shall include an Adjutant-General who shall be appointed by the Governor. The appointment of all other militia officers shall be provided for by the General Assembly." Kentucky had a section very similar to the present one in South Carolina. The Commission reasoned that all of the statements other than the one just listed were statutory details.

The Model states: "He shall be commander-in-chief of the armed forces of the state, except when they shall be called into the service of the United States, and may call them out to execute the laws, to preserve order, to suppress insurrection or to repel invasion." (Another section places all appointing power in the Governor, hence no statement is given on appointment of the Adjutant General.)

The Maryland approach is interesting and should be adapted to South Carolina custom without too much difficulty.

Note the following things in the Maryland Draft: 1) The General Assembly is authorized to supply the details. 2) No specific title is given other than commander-in-chief, avoiding the current change in title in S. C. 3) Definition of what the militia is is left to law -- if specific designations are used, they may in time be outdated. 4) Various regulations which the Committee left in the Declaration of Rights have been placed in this section by the Maryland Commission rather than leaving them in the Declaration.

The Maryland Draft discusses some of the background information on the militia. It follows on pages 37, 38 and 39.

Letter from S. C. Adjutant General - Confidential

ARTICLE XIII

MILITIA

1. MILITIA. - The Militia of this State shall be divided into two classes: the National Guard and the Unorganized Militia. The National Guard shall be organized, manned, armed, and equipped as authorized by the United States Department of Defense and disciplined as provided for in the Military Code of South Carolina. The Unorganized Militia shall consist of all able-bodied male citizens of the State between the ages of eighteen and forty-five years, except such persons as are now or may be exempted by the laws of the United States or this State, or who from religious scruples may be averse to bearing arms. When necessary and properly authorized, the Unorganized Militia shall be organized, manned, armed and equipped as the General Assembly may by law direct.

2. WHEN EXEMPT FROM ARREST. - The National Guard, or Organized Militia Forces, shall be exempt from arrest by warrant or other process while in active State service or while going to or returning from duty stations.

3. GOVERNOR MAY CALL OUT. - The Governor shall have the power to call out the National Guard or Unorganized Militia Forces

p. 2 of Letter from S. C. Adjutant General - Confidential

to execute the laws, repel invasions, suppress insurrections and preserve the public peace.

4. ADJUTANT GENERAL. - a. There shall be a Military Department headed by the Adjutant General, ~~who shall hold the~~ rank of ~~Major General and whose~~ duties and compensation shall be prescribed by law.

b. The Governor, shall appint the Adjutant General, ~~from the~~ seniority list of active National Guard officers, who

(1) Must have had a least fifteen years commissioned service in the South Carolina National Guard,

(2) And are in a grade above that of Lieutenant Colonel,

(3) And are qualified by regulations for promotion to a General Officer.

c. The appointment shall be continuous until the mandatory age requirement as established for such General Officers has been reached. He may be removed for cause or when because of disability, he is unable to perform the functions of his office. He may not hold office after he becomes sixty-four years of age.

sion to recommend also that the new constitution establish autonomy for the governing boards of all institutions of higher education, including the Board of Trustees of State Colleges.

The Commission is impressed by the rapid development in quality and quantity of the State's other higher educational facilities, including the five state colleges presently under the supervision of the Board of Trustees of State Colleges, Morgan State College which is now independent but contemplated for inclusion under the supervision of the Board of State Colleges,[291] and the community colleges which are now under the supervision of the Board of Education. The Commission is also concerned that all of these institutions of higher education be given maximum opportunity for unfettered development. However, the present system of state colleges and community colleges is relatively new and the Commission thinks that it would be unwise to establish permanently in the constitution a system of government for these colleges which is still in a state of development.

For these reasons, the Commission recommends that the constitution grant autonomy in academic matters to the governing boards of other public institutions of higher education and recognize the need of such governing boards for a large measure of statutory autonomy in the supervision, direction and control of their respective institutions and institutional funds. These concepts are expressed in the second sentence of this draft section.

Section 8.05. **Militia.**

The General Assembly may provide by law for a militia. The governor shall be its commander-in-chief and shall appoint its officers. The governor may call out the militia to repel invasions, suppress insurrections, and enforce the execution of the laws. The military power of the State shall be and remain subject to civil control at all times, and only members of the militia when in actual service may be subject to trial by a military court of this State.

Comment:

The provisions of the present Declaration of Rights and Constitution with respect to the military forces of the State, or militia, are found in Articles 28, 29, 30, 31 and 32 of the Declaration of Rights, Article II, Sections 8, 10 and 15 of the Constitution and Article IX of the Constitution, which now consists of two sections.

The five articles of the present Declaration of Rights are the familiar ones declaring that a well regulated militia is the natural defense of a free government, that standing armies are dangerous to liberty and ought not to be maintained without the consent of the General Assembly, that the military ought to be at all times under the control of the civil power, that no soldier should in time of peace be quartered in any house without the consent of the owner nor in time of war except in the manner prescribed by law, and that no person except regular soldiers, marines and mariners in actual service ought to be subject to or punishable by martial law.

Article II, Section 8 of the present Constitution designates the governor as commander-in-chief of the "land and

[291] Under House Bill 551, 1967 session of the General Assembly, Morgan State College would have remained independent. The bill was not passed but was referred to the Legislative Council.

naval forces of the State" and authorizes him to call out the militia to enforce the execution of the laws, but further provides that he shall not take command in person without the consent of the General Assembly. Section 10 provides that the governor shall nominate and, with the consent of the Senate, appoint all military officers whose selection is not otherwise provided for. Section 15 authorizes the governor to suspend or arrest any military officer of the State for disobedience of orders or other military offense and to remove such military officer pursuant to the sentence of a court-martial.

Article IX, Section 1 of the present Constitution directs the General Assembly to make provisions for organizing a militia and to pass laws to promote volunteer militia organizations. Section 2 of this Article provides for an adjutant general to be appointed by the governor and makes certain other provisions with respect to the duties of the adjutant general, the compensation of the adjutant general, and other officers of the general staff of the militia.

The Commission recommends this single draft section to replace and supersede the five articles of the present Declaration of Rights and the five sections of the present Constitution.

The Commission asked General George Gelston, Adjutant General, General Milton A. Reckord, former Adjutant General, and General William U. Ogletree, Assistant Adjutant General of the Maryland National Guard, for an expression of their views on the proposed militia provision. General Reckord, speaking for all three officers, stated that they were satisfied with the provisions of the present Constitution except for the last clause of Article IX, Section 2 limiting payments to officers of the staff. He also indicated, however, that there would be no problems under this draft section with respect to the militia's everyday operations which are presently governed by Article 65 of the Maryland Code.

Almost all state constitutions provide that the military shall be subservient to civil power; and all provide that the governor shall be the commander-in-chief and that the General Assembly shall provide for the organization and maintenance of the militia.[292] These three elements, plus the explicit power given to the governor to call out the militia and appoint its officers, are the substance of this draft section.

The Commission reviewed the historical background of Article 32 of the present Declaration of Rights to ascertain whether the term "martial law" as used therein was intended to prohibit the trial of civilians by military courts, or to prohibit the imposition of military rule on the civilian populace. The investigation showed that the original purpose of Article 32, the provisions of which have not been altered since the Constitution of 1776, was to assure that a civilian would be tried only in a civil court and not in a military court, and that military rule over a civilian community in time of domestic disorder (popularly termed "martial law") was not intended to be proscribed.

The Commission is of the opinion that the prohibition against the trial of civilians in military courts ought to be retained and that there should be included in a new constitution the substance of the provisions now contained in Article II, Section 8 stating the

[292] INDEX DIGEST 691, 701, 706.

purposes for which the governor may call out the militia.

This draft section confers on the governor broad powers to call out the militia, but any abuse of the power to invoke military rule may be resisted in the courts as a deprivation of due process of law under draft Section 1.04 and under the Fourteenth Amendment to the United States Constitution.

Section 8.06. Interstate Intergovernmental Cooperation.

This Constitution shall be construed to permit, except to the extent prohibited by law, the cooperation of the government of this State with any other government and the cooperation of the government of any county or other governmental unit with one or more other governments outside the boundaries of the State in the administration of their functions and powers.

Comment:

The Commission recommends the inclusion of this draft section in a new constitution to make it clear that there are no state constitutional obstacles to cooperation between the State or its local subdivisions, and the national government or other state or local governments, to the extent authorized by the General Assembly.

Although it does not appear that any other provision of the draft constitution would prohibit such intergovernmental cooperation, the Commission thinks it desirable to use this means to emphasize the need for an intergovernmental approach to many of the problems now faced by the people of the State. The specific mention of intergovernmental action in the new constitution should make both the electorate and public officials aware of the availability of such an approach.

Section 8.07. Oath of Office.

Every person elected or appointed to any office of profit or trust under the Constitution or laws of this State shall, before he enters upon the duties of such office, take and subscribe the following oath or affirmation: "I, ..., do swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of Maryland and support the Constitution and laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of ....., according to the Constitution and laws of this State." No other oath or political test shall be required.

Comment:

This draft section is essentially the same as Article I, Section 6 of the present Constitution with one deletion and one addition.

Article I, Section 6 of the present Constitution requires that before taking office a governor, senator, member of the House of Delegates or judge shall take an oath that he will not directly or indirectly receive the profits or any part of the profits of any other office during his term. This part of the oath has been omitted from this draft section for two reasons.

First, the Commission believes that the provision is wholly inappropriate for an oath of office. If there is to be a prohibition against holding more than one office, it should be stated affirmatively elsewhere in the Constitution.

Memo. No. 4

To: Committee on Constitutional Revision

From: Robert H. Stoudemire, Staff Consultant.

1. The next meeting will be held October 6 and 7, beginning at 10:00 a.m. in the Wallace Room, South Carolina State Board of Health, Bull Street Extension, Columbia, South Carolina.

2. Enclosed are four studies prepared by me on the general topic of State Services. For identification purposes, this paper is referred to as Working Paper Number 4. (Declaration of Rights - Working Paper Number 1; Suffrage - Working Paper Number 2; and Eminent Domain - Working Paper Number 3)

3. The paper on Finance and Taxation will be mailed Monday and the one on Debt on Tuesday.

4. The Minutes of the last meeting are very long but will be ready soon.