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MINUTES OF COMMITTEE MEETINGS

29 DEC. 1967

19 JAN. 1968

MINUTES OF COMMITTEE MEETING

The Committee to Make a Study of the Constitution of South Carolina, 1895, met in the Wallace Room of the State Board of Health Building, Columbia, South Carolina, on Friday, December 29, 1967.

The following members were present:

Senators-

Richard W. Riley

Lieutenant Governor, John C. West

Governor's Appointees-

Miss Sarah Leverette

T. Emmet Walsh

Staff Consultant-

Robert H. Stoudemire

The meeting was called to order at 10:30 by the Chairman, Lieutenant Governor John C. West.

Miss Leverette introduced two members of the League of Women Voters: Mrs. Sherrod L. Bungardner and Mrs. James Meriwether.

MR. WEST: Why don't you ladies come on around and we'll make you honorary members today. We are a little short of committee personnel and I must say that you ladies are much more attractive than the absent members. I hope your contribution to the meeting will be equally as good as your appearance.

Seriously, we have a quorum problem. Mr. Workman is ill and for various reasons other members could not be present.

Sarah, I was talking to Bob and Emmet about what we should do today. We decided to go ahead with as much of this material which is somewhat routine. On any matters which there seems to be a basic difference of opinion, we will postpone any final vote until the next meeting.

I also suggested to Bob that since time is running short, we ought to perhaps think about another session next Friday so that we might go back and review those sections which we have been putting off. If we can get a reasonably full attendance we will certainly need to do so.

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How would that suit you, Emmet?

MR. WALSH: I can't make it next Friday because I have several hearings that I must get out of the way. Court is starting and I have some hearings set. When does the Legislature convene?

MR. WEST: The 9th and it will be difficult to meet on legislative days.

MR. STOUDEMIRE: With the other things we have to do, we could have a two-hour session -- like getting together for the final approval for a lot of carry-overs.

MR. WALSH: What are you all going to do? Do you think you would be here much on the 9th and 10th? Or do you think there is a possibility of meeting the 11th and 12th?

MR. WEST: I think we could.

MISS LEVERETTE: Would all day on Saturday be bad for most of you?

MR. WEST: Yes, I think it is, Sarah. I don't believe we could get a quorum.

MISS LEVERETTE: I realize ordinarily it is.

MR. WEST: I think probably from a legislative viewpoint, it would be good if we could schedule a meeting beginning at about 2:30 or 3:00 and running perhaps into an evening session.

MR. WALSH: That might be a good idea. We could schedule a meeting at 2:30 and then plan to meet after supper too. That would suit me fine.

MR. WEST: We are going to have to start working like that, so think about it before we adjourn today.

We are delighted to have as guests today Mrs. Bumgardner and Mrs. Meriwether who are representing the League of Women Voters. Our sessions are very informal and if you have anything you want to say, don't worry about protocol.

We are pleased to have Mr. William Ouzts from the City Council and also Mr. Baker, representing the Citizens Conference on State Legislatures.

Please feel free to draw on your experiences and we would be glad to have your comments at any time you can join in.

By way of explanation, in view of the women in attendance, our procedure will be to continue in our normal way and on any matters

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which appear to be controversial or on which there is a basic difference of opinion, we will take no final action as far as committee recommendation is concerned.

As stated earlier, we will attempt to schedule perhaps in the next week at least one additional meeting -- a makeup meeting, we might term it.

Bob, where do we start?

MR. STOUDEMIRE: On page 21, Working Paper #8, Judicial Department.

MR. WEST: For the benefit of the ladies present, do we have an extra copy of the working paper that we might give them one to follow.

MR. STOUDEMIRE: Yes, we have already given them a copy.

As you may recall, last time we decided on a unified court down to the point where local ordinances were concerned.

MR. WEST: Let me just give a word of explanation to our guests as to our method of procedure.

We are taking the existing Constitution, section by section, with Bob and his research group preparing proposed revisions with comments, either eliminating the section, leaving it as it is, or changing it. The working papers are his and his research team's comments.

We consider the recommendations from the research group and then we take a tentative vote to either approve their recommendations or changes and that becomes more or less a tentative agreement of the committee. We will eventually have, through that procedure, a working draft of a proposed new constitution.

We have postponed until we get that proposed revision version of any decision on whether the committee will recommend a Constitutional Convention or perhaps a change of the existing Constitution by the amendment process. This is a right knotty problem and we, of course, have postponed any decision until we are able to see what we want to recommend. We consider it our function to come up with a proposed revised Constitution.

So with that word of explanation, we are starting on page 21.

MR. STOUDEMIRE: Mr. Chairman, Professor Abernathy thought you might like to consider this proposal -- removal provision -- since we have the judges elected. There is really nothing in our Constitution now about the removal of judges.

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I don't know if you want to bring this up now or save it until a later time.

Mr. WEST: The proposed provision: (reading)

"The Supreme Court shall have power, after hearing, to remove any judge from office upon a finding of misconduct in office or persistent failure to perform the duties of his office, or to retire any judge upon a finding of disability seriously interfering with the performance of his duties which is, or is likely to become, of a permanent character. A justice shall not sit in any hearing involving his own removal or retirement. Implementation and enforcement of this section may be by rule or order of the Supreme Court."

That, Bob, I believe is a follow-up of giving to the Chief Justice administrative authority. I think it is a badly needed provision.

MR. STOUDEMIRE: This comes from the Maryland draft.

MR. WALSH: Frankly, I think it is a good provision. It is not one that would be needed very often, but should it ever be needed, it's a good one.

MR. WEST: We have had some instances where judges became almost senile, I suspect.

MR. WALSH: Not so much so since we have the retirement situation.

MR. WEST: No. That's true.

MR. WALSH: I think it is a very good protective provision to put in.

MR. STOUDEMIRE: What would happen now if a judge were in a hospital with a stroke and could not even write his own resignation?

MR. WEST: That's a problem. We have never had an acute version of that, but we have had situations which have caused a lot of people to be concerned that that very thing might happen.

MR. STOUDEMIRE: Well, the way this reads right now, John, is to remove any judge. I assume that's what you would want.

MR. WEST: Yes, any judge.

MR. STOUDEMIRE: The county judge -- he ought to have the authority to remove county judges, city recorders or anybody.

MR. WEST: I think so, because really your problem comes on the lower

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level more than the upper ones.

MR. STOUDEMIRE: Mr. Chairman, that brings us down to the final thing where we adjourned last time:

Section 27, on the bottom of page 21. What will we do with the clerk of court?

MR. WEST: Working Paper what?

MR. STOUDEMIRE: No. 8. You remember in Section 7 we adopted that the Supreme Court clerk serve at the pleasure of the court, I believe, rather than the statement as now listed. That brings us down to the clerk of court, Section 27.

Last time we were discussing that the clerk has a two-headed responsibility, not only to the court, but to work with official papers and so on.

Professor Abernathy recommended that the clerk be taken out of the Constitution and actually the court could pick their own clerk.

We have had a great deal of discussion on this but never came to a conclusion, especially as to responsibilities of the clerk.

MR. WALSH: Mr. Chairman, I would add this. I think in many counties your clerk of court has administrative duties that did not used to be associated -- banking operation -- I don't know how it is in other counties, but in Spartanburg this sole question of collecting non-support payments through juvenile court and general sessions court got to be a real bookkeeping job. I think they have a girl and that is all she does. She receives payments and writes out checks.

Things like that -- in a way -- you just need somebody who is competent. I don't know how you're going to resolve it. Basically, it is administrative and ought to be selected by the governing body of the county, coupled with perhaps your judge. It is a dual thing as it now operates.

MISS LEVERETTE: In this record keeping, is this register of mesne conveyances -- all of that comes under this. That is a tremendous amount of work.

MR. STOUDEMIRE: We only have a separate registrar in a few counties. At least that has been my observation. Is that correct?

MR. WEST: Spartanburg is one, I believe.

MR. WALSH: Greenville has one too, and Charleston I think. Your recording of fees and all that is done separately.

MISS LEVERETTE: I meant to check on this before -- I brought it up last time about -- he is not directly involved in this -- under this central voter registration bill, isn't his office in some way, or may in the future have additional duties in this respect?

MR. STOUDEMIRE: Records are kept there. You have to file official election returns with the clerk and the thing that surprises us is how often you can find them, going back twenty years.

MR. WEST: We have given the clerk of Kershaw County a lot of additional duties -- actual supervision of the registration board. The registration board is historically a duty that we give the older political people as an honor and a little recognition -- the clerk, in many instances, has the authority to supervise it.

The question is -- there are two questions -- first, do we want to keep him in the Constitution?

Secondly, if we do keep him in the Constitution, do we eliminate the public election?

MR. WALSH: I personally think this is a right controversial thing. I know how Brantley feels about it -- he feels right strong about it.

My own opinion would be to take it out of the Constitution completely and if the General Assembly felt that it should be an elective office, then let it be an elective office. If not, then it could be filled as specified by law.

MR. WEST: I think that has a lot of merit to it, because although there would be some opposition to clerk of court existing -- wanting to continue to be elected -- certainly the alternative should be given to something like -- having the county council or county governing body select, subject to the approval of the presiding judge -- resident judge.

MR. STOUDEMIRE: John, I would think in terms of a constitutional statement recognizing that there shall be a clerk of all courts. Then, that the General Assembly shall prescribe duties and responsibilities, qualifications and manner of selection.

MISS LEVERETTE: Then you would require it and leave it up to the General Assembly?

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MR. STOUDEMIRE: Right. But you see one big problem we are going to have to get across to the people is, I think, that simply removing a position from the Constitution doesn't automatically say that you are removing this job from the electorate.

MR. WALSH: What it does -- by putting it in the Constitution, and saying there shall be a clerk of court and he shall be elected, it does create an administrative problem.

Very frequently you have the situation where your county board needs certain things for certain courts and he says: "I'm elected by the people -- I'm a constitutional officer and I'm going to carry out my duties like I see it.

We ought to leave the board so the Legislature can provide for effective administrative control. Dick, what do you think about that?

27?
MR. RILEY: It makes sense. My first opinion would be to remove this section 7 and leave the clerk of court as is.

The thing about it is -- it is a political question only involving various counties. I don't think we could go wrong in recommending in our draft to let the General Assembly take care of it.

MR. WEST: All right. Let's do that Bob. You'll have to word it.

MR. STOUDEMIRE: The same clerk now serves the county courts where they exist?

MR. WEST: Yes.

MR. WALSH: They serve the juvenile and the domestic relations in Spartanburg.

MR. WEST: I think that is sound -- one central record -- a clerk for each county to serve all courts of record.

And if that is agreed, let's proceed.

MR. STOUDEMIRE: Section 8. (reading)

"When a judgment or decree is reversed or affirmed by the Supreme Court, every point made and distinctly stated in the cause and fairly arising upon the record of the case shall be considered and decided, and the reason thereof."

Now Professor Abernathy recommends that this be taken out.

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MR. WEST: I want to announce for the record that I have always wanted to see the lawyer who had courage enough to raise that question and I haven't found him yet.

MR. STOUDEMIRE: The requirement that opinions be written in every case is unreasonable, so says Professor Abernathy. That's one thing that is required. Is that correct? Doesn't it take a written opinion?

MR. WEST: It takes a written opinion -- deciding it on the overriding issue in many instances.

MR. WALSH: I think their contention is that those other cases don't fairly arise on the record that you just put them in -- not real issues.

MR. WEST: The point is that the recommendation is that we delete it is certainly the present practice in that we might want to think about the fact that maybe we should relieve them of the necessity of writing an opinion.

MR. WALSH: I frankly think not. My impression is that -- I don't say you ought to write an opinion in every case -- every decision should be reduced to writing.

MR. WEST: I think so because if the lawyers go through the problem and travail of appeal to the Supreme Court, I don't want one word denied there.

MISS LEVERETTE: Don't you find, John, too, or I have found in other cases where they have this situation that you get this memo decision - a word or two -- it's frustrating.

MR. WEST: That's right. What it means is that you have to go back to the lower court's decision.

I had to call Pennsylvania not long ago to get a lower court decision -- court of appeals -- just said "denied". It was rather an obscure point that I wanted to clarify, so I called a lawyer and got a photostat of the lower court decision.

MISS LEVERETTE: I had one yesterday from Tennessee -- the same type thing.

MR. STOUDEMIRE: Then are you people saying that we want the first clause and the last clause?

"When a judgment or decree is reversed or affirmed by the Supreme Court" -- now jump all the way down "the reason thereof shall be concisely and briefly stated in writing and preserved with the record of the case."

MR. WALSH: I think that's a good thing to leave in there.

MR. RILEY: Are you talking about part two?

MR. STOUDEMIRE: Section 8, page 22, Dick.

MR. WALSH: It may have to be rephrased a little bit. I think basically I would go along with leaving that in.

MR. STOUDEMIRE: All right, Section 9. "Compensation of judges and justices."

I think Professor Abernathy rewrote that just a little bit for some reason.

MR. WEST: He has a pretty good revision here.

MR. STOUDEMIRE: He brings up that this would include the county court, and I assume it would -- the Justices of the Supreme Court and the Judges of the Circuit Courts -- we could say Judges of all courts of record, if you want to.

MR. WEST: Why don't we say the judges of all courts of record shall receive compensation. In fact, I don't know why we shouldn't include all judges.

MR. WALSH: Well, now what about a municipal judge -- you don't have -- do you -- any in the state which they could be paid enough to take care of.

Our civil court in Spartanburg is a court of record and yet it is a statutory court, designed to remove all small civil litigations, yet it is a court of record.

MR. WEST: The judge is full time, isn't he?

MR. WALSH: He is full time, but not forbidden the practice of law. Each one of them will check a few titles when he has time. Each one is in his office every day from 9 until 5 and if he doesn't have a trial some afternoons and if they have some legal matters to work on, they do so.

MR. STOUDEMIRE: Mr. Chairman, I think we can do this. See if you agree with it.

We can word this thing to really apply to our major trial courts.

MR. WEST: That's what we need.

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MR. STOUDEMIRE: I don't think this would prevent the General Assembly then in coming back with a law making the very same rule apply to lesser courts.

MR. WEST: In other words, there ought to be a constitutional prohibition against the trial judges holding political offices, practicing law on the side and what have you.

MISS LEVERETTE: You are taking that through the circuit courts?

MR. WEST: Yes.

MR. STOUDEMIRE: This would not, as I see it, prevent the General Assembly from making the same requirements for any county court, probate or anything else.

MR. WALSH: Most of your county courts in a sense -- I'm not thinking of lower than county courts -- don't practice law or anything. . .

(MR. OUZTS: I don't want to interfere but I believe this would be a problem the municipal association would probably be very much against, because of the fact that you could only have full-time municipal judges in the larger cities -- take a small county, for instance, Bamberg. It would be almost impossible to pay enough money to a good judge and also you wouldn't have enough business for him.)

MR. WEST: I don't think there's any question -- we don't want to even say city recorder. We can't prohibit him from practicing law.

MR. STOUDEMIRE: But John, are we in agreement that we would take Professor Abernathy's Section J on page 24 and apply it to our major trial court and Supreme Court.

MR. WEST: Right.

MR. STOUDEMIRE: You will remember we adopted the idea that county courts in the future would have to be done by general law and I would think that when the General Assembly would enact a general law on courts below the major trial courts that they would also take into consideration the question of political activity, qualifications and everything else, would they not?

MR. RILEY: Now is that a duplication of your dual office holding provision or would it matter?

MR. STOUDEMIRE: I don't think it would matter "or hold any other office or position of profit under the United States." That could come out really -- that section of it.

MISS LEVERETTE: I think that ought to stay in as a matter of emphasizing it.

MR. STOUDEMIRE: Or we could come back and in our final draft determine whether the general statement is adequate for judges. Somehow if we wanted a general statement, we could even say "including judges".

MR. WALSH: I think in some of those things once you put together all these separate provisions and take a look at them as a whole you might have a better judgment and idea how they fit it.

MR. STOUDEMIRE: Right. We are agreed then on the thought.

MISS LEVERETTE: This word "prerequisites, isn't it supposed to be "perquisites"?

MR. STOUDEMIRE: (reading) "nor shall they be allowed any fees or". . .

MR. RILEY: The word "perquisites" is in the Constitution.

MISS LEVERETTE: That's what he means.

MR. STOUDEMIRE: Well, let me see, Sarah.

MR. RILEY: I was wondering if you didn't have to have any prerequisites.

MR. WEST: I am glad we have some academic characters here.

All right, let's pass on to Section 10.

MR. STOUDEMIRE: Section 10. --"Qualifications of." Professor Abernathy says this provision should be continued with only one change -- the inclusion of judges of the county court.

Let me ask you people something. (reading) "and has not attained the age of twenty-six" -- by the time they get through law school -- twenty-four -- must have five years.

MR. WALSH: You might make them vote at eighteen -- let them vote at eighteen.

MR. WEST: I don't think it does any harm.

MR. STOUDEMIRE: You do feel that a person to be judge ought to have five years' experience?

MISS LEVERETTE: You've got a limit anyway on admission to the bar -- with that and five years . . .

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MR. STOUDEMIRE: Well, the section is approved then?

MR. RILEY: You don't want to put county courts in there?

MR. STOUDEMIRE: We could put county courts there which would automatically apply wherever county court is created. It might well be.

MR. WEST: I think that is reasonable.

MR. STOUDEMIRE: You know these county courts do decide serious cases.

MR. WEST: Yes, they do.

MR. STOUDEMIRE: Now, Section 11. Gentlemen, we have switches around. Professor Abernathy's comments are no longer altogether perfect, since we didn't follow his method of election, so I think we have to look at this:

"All vacancies in the Supreme Court or inferior tribunals shall be filled by elections as herein prescribed. Provided, That if the unexpired term does not exceed one year such vacancy may be filled by executive appointment. All Judges, by virtue of their office, shall be conservators of the peace throughout the State;" -- which Professor recommended be taken out -- "and when a vacancy is filled by either appointment or election, the incumbent shall hold only for the unexpired term of his predecessor."

MR. WALSH: This is something I never saw before "Provided, That if the unexpired term does not exceed one year such vacancy may be filled" . . .

MR. WEST: I have never seen it operate. I don't believe it has ever been done.

MR. STOUDEMIRE: Do you suppose they interpret that to mean you would have to have legislative authority?

MR. WEST: Well, the Legislature could do it.

MR. STOUDEMIRE: Constitutionally we have created judges, haven't we? And we have created how they get their jobs -- now constitutionally do we have to solve how a vacancy is filled?

MR. WALSH: You don't have to from a constitutional standpoint, but some provision ought to be made.

MR. WEST: Again, what is wrong with the provision here.

MR. STOUDEMIRE: I don't see anything particularly wrong.

MR. WEST: We are eliminating "conservators of the peace".

MR. STOUDEMIRE: (reading) "may be filled by executive appointment." I would just say "Governor" and be done with it. That's what you mean, isn't it?

In this section, do we want to strike this business of "conservators of the peace"? I don't know what it means.

MR. WEST: Unless somebody can explain what it means, I think we ought to eliminate it.

MR. WALSH: He maintains and keeps peace.

MR. STOUDEMIRE: All right then, "All vacancies of the Supreme Court or inferior tribunals shall be filled by elections as herein prescribed."

You know we may have to work this and go back and merge with our earlier decision. The idea of vacancies can go all the way down, can't they?

Mr. Chairman, do you agree to that -- that we take out this "conservators of the peace" -- and then let Professor Abernathy work this out agreeing to this but fit it to the proper categories?

MR. WEST: Right.

MR. STOUDEMIRE: We have to consider the magistrates and the county courts and so on.

MR. WALSH: In many many cases the Governor appoints magistrates now.

MR. WEST: With the advice and consent of the Senate.

MR. STOUDEMIRE: Section 12, we have already covered.

Now, Sections 13 through 18 concerns the business of judicial circuits, interchange of judges, jurisdiction of courts of common pleas, sitting twice, decisions, and so on.

MR. WEST: Haven't we already decided . . .

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MR. STOUDEMIRE: We were discussing, John, I think -- I don't know whether we ever actually decided whether the judge had to live in the circuit or not. We agreed on sixteen circuits.

MR. WEST: And five roving judges.

MR. STOUDEMIRE: Yes.

MR. WALSH: Could I throw in a little bit of information I picked up on that subject?

MR. WEST: Of course.

MR. WALSH: I understand the Judicial Committee has done a good deal of work recently on this. They have concluded that your roving or floating judges would not solve the problem.

Just taking into consideration the perplexities which dictated the creation of several more circuits -- just to say that they are elected anywhere in the State, go where the Chief Justice may send them is not enough. You have three or four areas in the State. They need somebody there practically all the time.

Like the situation in our circuit -- if the circuit judge happens, himself, to be assigned to another busy circuit, we are just without a judge for so many many things apart from trying cases.

MR. WEST: Emmet, does that take into consideration the fact that we have given to the Chief Justice the administrative authority to supervise these operations?

MR. WALSH: I think so, but they are proposing a constitutional amendment to provide more than one judge in a circuit and limit it to four.

MR. STOUDEMIRE: Four circuits?

MR. WEST: I don't believe that will pass because you limit it to four and the next most popular circuits are going to say five -- then they're going to say six, and you're going to end up with nothing, in my judgment.

MR. WALSH: I just threw that out as a bit of information.

MR. STOUDEMIRE: Since our decision on these judges I have been giving some thought to this business of fixing these major trial judges at twenty-one in the Constitution. Now, I was thinking if you want to go a little further with some thought to the fact

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that additional judges -- a judgeship could be created upon an extraordinary vote of the General Assembly, upon a recommendation of the Supreme Court Judicial Council or in other words some safeguard.

MR. WEST: I'd be a little reluctant -- that's good in theory but in practice. . .

MR. STOUDEMIRE: You couldn't get two-thirds.

MR. WEST: You'd have to do a lot of horse trading to get two-thirds.

MR. STOUDEMIRE: It does worry me to have the number of judges constitutionally fixed.

MR. WEST: But here's the thing. You can always relieve that by your county judges. Many of them have jurisdiction almost the same for practical purposes.

In the circuit court of Richland County, I think they are up to twenty-five thousand dollars and they have general equity jurisdiction. Judge Bates has heard more cases against the Tax Commission, I guess, than any other judge in the State.

My thinking is that if it becomes sufficiently acute, you can have your constitutional amendment do it, but if you don't have your constitutional amendment safeguard -- I'll put it this way -- as long as the Legislature elects the judges I would be reluctant to do that.

MISS LEVERETTE: I expect they will continue.

MR. WALSH: Gentlemen, here is the real problem. I understand the Judicial Council has pretty well considered it and thought this was the best.

MR. WEST: We had a recommendation from the Judicial Council last time, I think it was.

MR. WALSH: They are amplifying that a little bit. Most of them and tending -- I'm not saying this was the real decision -- toward the idea that the only way to help Richland is to give Richland another judge who would be here most of the time.

MR. WEST: You know, actually, Richland County is not in too bad a shape. It isn't in any worse shape than Kershaw County. Kershaw County is in the same circuit.

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MR. WALSH: I mean give this circuit another judge.

MR. WEST: You can try a case in court of common pleas within a year in Richland County.

MR. RILEY: John, the reason is and in all fairness to the people of Richland County -- out of their own pockets are supplying a circuit judge.

MR. WEST: They are providing two circuit judges.

MR. RILEY: And certainly somewhere down the line some consideration should be given to the fact that Greenville, Richland, Spartanburg, and Charleston should have adequate state judges to handle the court situation.

MR. STOUDEMIRE: Dick, if this thing could be adopted and the General Assembly would follow through by general law creating county courts, my thinking would be that they'd go one step further and pay these county judges from State funds.

MR. WEST: I think that's going to relieve the situation.

MR. WALSH: Irrespective of the question of trying, that is not where the backlog is in Spartanburg at all. We can get our trial cases up. Trial cases are such a small portion of the litigation.

There is a case that Judge Weatherford heard which he thought would take about a day. It lasted for six days and he still didn't have it finished. We get into some big cases in which large sums of money may be involved and the people want it heard -- too much money for any other circuit court.

You hear of cases taking three and four weeks. I think we're getting business with great amounts of money involved that I think we are going to get to the place where, when a case like that comes up, we're going to have to be able to go to the court room and be there not on a rush basis like he had to -- getting there one night at 7 p. m. -- but on a nine to five basis for two, three or four weeks.

MR. WEST: Emmet, I think that is the beauty of your roving circuit judges. Now, in the federal court we have already reached that as you perhaps know. We have cases that take a week or two weeks. What happens is this, the chief judge, at least in this area, and I've been in a couple of them, will say, well, I'll set a special term of court at Florence for week so and so and if it runs two weeks, Judge Hemphill or somebody will be there. When you have a week set aside or two weeks set aside to try a case and have enough warranty that pretty well does it.

Obviously one of the roving circuit judges could be assigned to the big cases.

MR. WALSH: That may well be. I'm not really strongly in favor of one or the other. I have just asked a lot of people for their ideas since we have discussed it and I found that some of them seem to think that the immediate solution may well be in making a provision constitutionally to permit the General Assembly to provide more circuit judges where needed by population.

MR. WEST: I come back -- as long as the Legislature is doing the electing, I think we have a weak spot in the setup.

MR. WALSH: You may be right.

MR. WEST: If you vote to take away the elective power from the Legislature, then I'd say you were right. As long as the Legislature makes the determination of where they are needed and also elects, you've got a situation that's not good.

MR. WALSH: You're probably right.

MISS LEVERETTE: Bob, what did we decide on?

MR. STOUDEMIRE: Last time we decided on sixteen circuits based on a reasonable description and -- my notes are incomplete -- but picking up we have five roving judges.

MR. WEST: Not to exceed.

MR. STOUDEMIRE: Yes, not to exceed and have the word "irrespective" and putting my thoughts together, I think what we decided was that sixteen must live in the circuit and five could live anywhere. That is our decision.

MISS LEVERETTE: I have had some second thoughts on the limitation of the number of circuits, because I believe the time may come when we might want to establish more.

MR. WEST: Sarah, I would argue with you just for the sake of argument to the extent that as long as you have the transportation facilities, the justification for the circuit is the convenience of access and if you look at the sixteen circuits and one of the justifications for creating the Georgetown Circuit, for example, was the fact that the lawyers in Georgetown had to drive seventy miles to Florence to get a circuit judge.

Now I don't believe you'll find any circuit judge more than an hour's drive from furthest county seat. Ridgeland -- and they have a little situation down in Hampton -- I believe Ridgeland is probably an hour and one-half drive from Hampton but that's so sparsely settled that it would be hard to justify another judge there.

MISS LEVERETTE: That would be relieved too - talking about your county courts.

MR. WEST: Right.

MR. STOUDEMIRE: This just came to me and I'll say this and I won't have any more to say about it.

We could perhaps do the circuits the same way we did the -- not more than five -- if you wanted to up it not more than eighteen circuits. . .

Mr. Chairman, Section 13 says that the State shall be divided into as many -- we'd have to say sixteen circuits now and for each circuit a judge shall be elected and so on who shall hold his office -- and we changed that to six -- and at the time of his election he shall be an elector of the county. All that seems to be o.k.

"The present Judges of the Circuit Courts shall continue in office" -- we don't need that, do we? "until the expiration of the term for which they were elected and should a new division of the judicial circuits be made, shall be the Judges of the respective circuits in which they shall reside after said division."

Well, that doesn't hurt anything. Do you want to keep this as is with the change of "sixteen" and "six"? We created the terms for six years, I believe.

MR. RILEY: Do we want to put the same language in there only . . .

MR. STOUDEMIRE: We changed that last time.

MR. RILEY: The same language we had on the Supreme Court? Didn't we put in about secret ballot?

MR. STOUDEMIRE: By public ballot -- shall be elected by a joint vote of the General Assembly.

Now, Section 14 on the next page "Interchange of Circuits -- Judges of the Circuit Courts shall interchange circuits with each other, and the General Assembly shall provide therefor."

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Does everybody want to keep that?

MR. WEST: That's O.K. It is agreed.

MR. STOUDEMIRE: Now, Section 15. "Jurisdiction of courts of common pleas. -- The Courts of Common Pleas shall have original jurisdiction, subject to appeals to the Supreme Court, to issue writs or orders of injunction, mandamus, habeas corpus, and such other writs as may be necessary to carry their powers into full effect. They shall have jurisdiction in all civil cases. They shall have appellate jurisdiction in all cases within the jurisdiction of inferior courts," and so on.

Of course all this -- we'll have to form our own opinion.

MR. WEST: I think we could work the jurisdiction into the court of common pleas and general sessions possibly into one section.

MR. STOUDEMIRE: Sections 15 and 18 could be combined?

MR. WEST: Right, giving original unlimited jurisdiction in both civil and criminal cases. Then appellate jurisdiction for all inferior courts.

You can also say they shall sit at least twice in each county each year. I think that is probably a good provision.

MR. STOUDEMIRE: I don't see any harm because it doesn't say how long one must sit.

MR. WALSH: It's not a bad idea.

MR. STOUDEMIRE: Now, you're making me shift gear here on Section 17.

MR. WEST: You may as well eliminate that, because again I have never seen the lawyer who had the courage to call the Supreme Court's hand.

MR. STOUDEMIRE: You want to delete 17?

MR. WEST: We might as well.

MR. STOUDEMIRE: Gentlemen, that brings us down to page 31 -- another hot one -- "Court of Probate".

MR. WEST: Why don't we eliminate Court of Probate as a Constitutional Court. There isn't any reason for it, is there?

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MR. STOUDEMIRE: This is a matter of curiosity now -- (reading) "shall be vested as the General Assembly may provide; and until such provision such jurisdiction shall remain as now provided by law."

Is that section interpreted that the probate judge be constitutionally elected? You know we call him one of the constitutional officers.

MR. WEST: No, actually, the probate judge of Charleston County is the only constitutional officer, isn't he?

MR. STOUDEMIRE: They changed that to make it conform to the general statewide law.

MISS LEVERETTE: I understood the reason that was done -- was in order to make it possible -- I don't know who's reasoning this was, to provide -- to bring it in line with the other probate courts and probably to provide for a uniform system.

MR. STOUDEMIRE: One thing I would think about if you take it out of the Constitution -- it would, in some of your smaller counties, leave the way open under general state laws to combine if they would so want to.

MR. WALSH: I think that would be a good idea. A lot of small counties, I think in the future, would be most productive by maybe having a county judge in probate court.

MR. WEST: Well, you know actually the probate court, if you have been through will contests, is sort of ridiculous. You go in and try the case before the judge of probate and whichever side loses . . . appeal and have a trial before the circuit court -- will or no will.

MR. WALSH: All it is, is a kind of discovery process.

MR. WEST: That's right. It's a preliminary hearing.

Actually, I think it should be -- the provision should be that the General Assembly shall make provisions for matters testamentary and administration.

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MR. STOUDEMIRE: Is it agreed then that we take it out?

MR. RILEY: What did you say, John?

MR. WEST: That the General Assembly shall make provision for matters of probate.

MR. WALSH: I don't believe these are constitutional officers.

MR. RILEY: No. It is just saying that the General Assembly will have to make provisions.

MR. WALSH: That's really all it's saying. But why change it. Maybe we had better leave it like it is.

MR. STOUDEMIRE: Let me ask one question, just for the record?

MR. WALSH: Except take out that very last sentence.

MR. STOUDEMIRE: You don't need that.

MR. WALSH: Put a period after "provide".

MR. STOUDEMIRE: The next General Assembly, in its wisdom, pass a law saying that probate judges are elected in any manner that they want to say.

Now, we're down to magistrates. I believe we have already decided that, haven't we?

That takes care of Sections 20 and 21. Where is 22?

MR. WEST: We are all through with magistrates..

MR. STOUDEMIRE: Let me find Section 22. It's trial by jury -- jury in inferior courts -- grand jury. Oh, Section 22 will be coming up later.

MR. WEST: We are now on Section 24.

MR. STOUDEMIRE: We have omitted Sections 20, 21 and 23. We are now on page 42.

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MR. WALSH: Everytime I think about a magistrate -- the professor over here says we need to consider the fact that most of our justice is administered in inferior courts, and that is true when you think of it.

Some of the most vital things affecting the people are handled by your inferior courts.

I'll never forget an actual case. Do you know _____? He was up in a trial before the magistrate and he carried along a book. I don't think the magistrate -- I don't know whether he could read or not. Mr. _____ was on the other side and ole _____, with great flourish, layed out this book and started by saying, "now, your honor, let me tell you what the law is -- he was looking at the book and reading off some stuff. _____ said "I don't believe that is in there, let me see it?" He shut the book and said "I brought my own book, and you can't see my book. The judge said, "that's right Mr. _____, you could have brought any book you wanted to."

MR. WEST: You've heard _____ famous story. He took the book over and the fellow looked at it and says "judge, your honor, Mr. _____ is trying to mislead the court. You see that book with the S. C. Reports and you know what a report is -- it's hearsay."

MR. STOUDEMIRE: Well Section 24 appears to me to be useless. (Section 24. Compensation for all other officers).

MR. WEST: Let's leave that out.

MR. STOUDEMIRE: Now Section 22 -- I'm checking now -- the declaration of rights is where he says it ought to go -- whether that be your wish or not, we'll wait and see. But in the declaration of rights: "In all criminal prosecution the . . . shall enjoy the rights to a speedy and public trial by an impartial jury." It goes on but that's all it has to say about the jury -- yes, in the Grand Jury of course. We have already created that. Do we want to specify the size of juries in the Constitution or not?

MR. WALSH: I think so.

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MR. RILEY: Of course our view in Greenville on increasing it to twelve was . . . jurisdiction . . . twenty-five thousand dollars . . . county judgehandling.

If we are going to put a lot of responsibility in these county courts, we ought to direct the General Assembly to limit it or just not say anything about it.

MR. STOUDEMIRE: This means that the Richland County Court now won't have ^{but} six jurors?

MR. WALSH: Spartanburg only has six.

MR. WEST: Most of the county courts only have six. Of course now I'll raise another real good one, Dick.

Do we want to keep that provision in "all of whom must agree"? You know the Bar Association has -- back in some areas now -- three-fourths jury of something like that.

MR. WALSH: ^IHaven't been convinced yet that ~~it~~ is a good thing to have . . . two verdicts.

MR. WEST: I wasn't either until about a year ago. In fact it was right before Christmas last year. I tried a little case down here in the county court of Richland. It was sort of an open and shut case. The jury stayed out ten hours. They kept reporting that they couldn't agree. There was one fellow on there who said "Well, I'll just hold out until Christmas". Some of the others said, "That's fine, Christmas is only about ten days away.." He said, "Oh, I'm not talking about this Christmas, I'm talking about next Christmas."

MR. RILEY: Of course that can work two ways..

MR. WEST: Yes. I agree that it can.

MR. WALSH: I don't try many criminal cases,, but I had a drunk driving case in which they stayed out so long that the judge finally declared a mistrial. It was a good client . . . I found out later it was eleven to one for acquittal.

MR. STOUDEMIRE: Mr. Chairman, this section has a lot in it. Maybe we need to go through with it sentence by sentence.

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MR. WEST: All right.

MR. STOUDEMIRE: (reading) "All persons charged with an offense shall have the right to demand and obtain a trial by jury."

MR. WEST: Everybody will agree to that.

MR. STOUDEMIRE: "The jury in cases civil or criminal in all municipal courts and courts inferior to circuit courts, shall consist of six."

MISS LEVERETTE: I have seen the time in recorder court here in Columbia where you couldn't get six jurors. You might take care of this situation by extending -- county courts -- I mean allowing them to have four but still keep six on your municipal courts.

MR. WEST: I would put it this way, Bob, that the petty jury of the circuit court shall consist of twelve -- the Grand Jury eighteen, of which twelve may agree, and the inferior courts such numbers as may be provided by the General Assembly.

MR. STOUDEMIRE: Does everybody agree? Twelve and eighteen for our regular courts and inferior by the General Assembly.

MR. WALSH: I think that's probably all right.

MR. STOUDEMIRE: (reading) "The grand jury of each county shall consist of eighteen members, twelve of whom must agree."

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

MR. STOUDEMIRE: (reading) "The petit jury of the circuit court shall consist of twelve" -- all right we have agreed to that -- "all of whom must agree" -- we have agreed to that.

MR. WEST: Yes. We agree to that.

MR. STOUDEMIRE: (reading) "Each juror must be a qualified elector under the provisions of this Constitution".

MR. WEST: I think so.

MR. RILEY: Mr. Chairman, what do you think of the advisability -- I have heard a lot of discussions which aroused by curiosity -- I

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was thinking it might be advisable for us to communicate with the defendant's organization in the American Trial Lawyers' Association and ask them to state their views on this.

MR. WEST: I agree with you. We are, however, going to submit this to the Judicial Council before our report is submitted. I think we might do well to call attention to questions such as this: "If you have any recommendations specifically on whether the Constitution should provide for a unanimous verdict and so on or whether it should be silent, we would like to have them."

I think, Bob, that this is one of the points on which you should make a note to call attention to in our letter or proposed draft to the Bar Association. I think they are very much interested and as I related last time as a result of my swing around the circuit with the State Chamber of Commerce, I was personally surprised to see the interest in the Constitutional Study Committee. It wasn't just limited to lawyers. At every meeting we got at least one question "How is the constitutional revision coming along?"

MR. STOUDEMIRE: (reading) "between the ages of twenty-one" -- I am assuming -- that they way the Constitution is written now you don't need twenty-one.

MR. WEST: The question is do you want to eliminate that age. The Federal Courts have eliminated the age situation and it is quite possible -- some has raised the question . . .

MR. RILEY: I move that we strike twenty-one and sixty-five.

MR. WALSH: The idea is that there are a lot of good seventy year old people who are retired.

MR. RILEY: You have got the "qualified elector".

MR. WEST: I think the "qualified elector" . . .

MR. RILEY: If you lower the voting age to eighteen.

MR. STOUDEMIRE: Now, what?

MR. RILEY: Lower the jury age.

MR. STOUDEMIRE: Does that suit you?

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MR. WEST: Right. "must be a qualified elector".

MR. STOUDEMIRE: O.K. and- "under the provisions of this Constitution".

MR. WEST: Do you want to leave "and of good moral character"? I have never seen a juror challenged on those grounds.

MR. STOUDEMIRE: I like that. It sounds good.

MR. WEST: O.K. We'll leave it in.

MR. STOUDEMIRE: And then by giving the General Assembly the right on these inferior jurors will take care of the last two provisos, would it not?

MR. WEST: Right.

MR. STOUDEMIRE: Now, one more question. Is this a bill of rights statement or is it a court statement? Or does it make any difference?

MR. WEST: I think it's really basically a bill of rights.

MR. WALSH: The question of what is a speedy trial is one that never has been determined.

MR. STOUDEMIRE: My feeling is that it would be better to put it along with all the other grand juries-- you see we have three or four sections already on the grand jury and it would all fit in. Is it all right to transfer?

MR. WEST: Yes.

MR. STOUDEMIRE: The next Section is 25. "Powers at chambers".

MR. WEST: The thing that concerns me about this -- if we eliminate it would the question come up: "Does the judge have the power when court is not sitting to issue orders and so on?"

I would be inclined to say that he doesn't, because I'm sure some lawyer would raise the question and produce litigation.

MR. WALSH: I think you're right.

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MR. STOUDEMIRE: Mr. Abernathy raised the question: "Do you want that last sentence?"

"The judges of the circuit court shall have such powers at chambers as the General Assembly may provide."

Do we want to broaden that and take in the county court idea or not?

MR. WEST: They would have it anyway wouldn't they?

MR. STOUDEMIRE: Yes.

MR. WEST: Would the General Assembly have the right to give the judges of inferior courts such powers and so on?

MR. STOUDEMIRE: Yes.

MR. WEST: Let's just leave that section -- that sentence out.

MR. STOUDEMIRE: (reading) "as when in open court". Now that doesn't do anything, does it?

MR. WEST: No.

MR. RILEY: You don't want to add county court in there?

MR. WEST: Do you need it? I see no real objection, but at the same time doesn't the General Assembly have the right to give the county court in the absence of some restrictive provision. . .

MR. STOUDEMIRE: What worries me is that you make a positive statement about the others. Could someone argue that you meant to exclude them?

Let's see if we have a citation on this anywhere.

MISS LEVERETTE: If you look at it from the standpoint of limitation on powers it still . . .

MR. STOUDEMIRE: I don't see anything.

MR. RILEY: Well, we would want the county judges to have the same powers, wouldn't we, or not?

MR. WALSH: I think so.

MR. RILEY: If so, I'd say let's put them in.

MR. WEST: Yes, let's put that in -- what you're doing here is giving the power in chambers that they have in open court and no more. Right?

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MR. RILEY: That's right.

MR. WEST: Why don't we say -- Supreme, circuit and county courts.

MR. WALSH: Well, what about judges of inferior courts?

MR. WEST: Judges of inferior courts. You don't want to call a circuit court an inferior court. Why don't we say judges of all courts shall have the same power at chambers as when in open court. //

MR. STOUDEMIRE: "to issue".

MR. WEST: No, don't put in all that.

MR. WALSH: It used to be the tradition in this State that you had to mean open courts.

MR. WEST: Right.

MR. WALSH: The court had to be open.

MR. WEST: In other words it's just a . . . that maybe you are limiting it.

MR. WALSH: The theory now is, the court is open any time the judge is there.

MR. WEST: Judges of all courts shall have the same power at chambers as when in open court.

MR. RILEY: Doesn't that mean that they get into pleas and things like that?

MR. WEST: I don't think so.

MR. WALSH: I'll tell you one of the biggest savings we can make is to make some provision to let people out on their own bond. The record shows that you're just cooping these people up in jail and it doesn't help a thing.

MR. RILEY: I certainly think we ought to think about this. It might be carried a lot farther than we are hitting on.

MR. WEST: Let's make another note to call the Bar's and the Judicial Council's particular attention to these two items.

MR. RILEY: My information is that all courts. . .

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MR. WEST: Right. All courts shall be open at all times for all purposes. That's our theory.

MR. STOUDEMIRE: For an explanatory note, I'd say that all these things are automatically included in this, am I right? //

MR. WEST: Right, and let's take a ten minutes break.

Mr. Jim Smith's funeral is being held this afternoon and I don't know if this would affect anybody else or not -- the funeral is at 3 o'clock this afternoon. I would like to go.

MR. STOUDEMIRE: I was just wondering if we should finish the courts and then adjourn for the day.

MR. WEST: Would it suit everybody to continue on until about 2 or 2:15 p. m. and we'll just see how far we can get.

MR. RILEY: I'm going to have to meet a client at 1 p.m. and I'll have to miss from 1 until 2. I'll get back at 2 o'clock.

MR. WEST: Dick, we are trying to decide when we can have a make-up meeting. Emmet says next Thursday and Friday would be completely out with him. How many more meetings are we going to need before we can get this thing wrapped up, Bob?

MR. STOUDEMIRE: I would say local government would take a full day. Then we have the section on miscellaneous.

MR. WEST: Another day, do you think?

MR. STOUDEMIRE: The big thing is, do we need to do any great research on divorce? Are you going to leave it in the Constitution as it is?

MR. RILEY: I'll tell you what we need now. It looks to me like it is about a two-day get together.

MR. WALSH: I think we need to put everything we have decided on together.

MR. RILEY: Well, we have got to finish first, Emmet.

MR. WEST: We will have to go through and then we'll have to get the draft of what we have done. Then we'll have to assess that and revise it. Then we've got to send it out to the various organizations and hold public meetings on what we have. Then we've got to make our final decision.

MR. STOUDEMIRE: We haven't made a final agreement on the search warrant provision. That's a hold-over. We never made a final

decision on urban renewal. Those two things come to mind right now.

MR. WALSH: There are a number of things that occur to me. Some relate back to local government.

MR. WEST: Let's just say that we must settle down for probably a two-day meeting. How about the 12th and 13th of January? We will probably get out of the General Assembly on Wednesday.

MR. WALSH: The only reason I'm so tied up next week is that you know this week everybody closed on Tuesday and yesterday was the only day we have had this week.

MR. STOUDEMIRE: That would step us up a week -- the 19th.

MR. WALSH: We had one scheduled for the 19th and 20th.

MR. WEST: What would suit you, Dick?

MR. RILEY: I think we are going to have to make a sacrifice to get this thing tied up. We might as well do it early in the session.

MR. WEST: It would be a whole lot easier early in the session.

MR. STOUDEMIRE: After we get this local government thing out of the way, we can do a lot of the other in short sessions if you have to -- like two hours.

MR. WEST: I think that maybe Monday afternoon we can come in at about 3 p. m. or so and work until 8 p. m.

MR. RILEY: And Tuesday morning too.

MR. WEST: Yes. We'll have a couple of hours then.

MR. WALSH: We can work into the schedule with you folks.

MR. WEST: I know from experience that once you get into the grind of that three-day week, on Friday you aren't worth anything anyhow.

MR. RILEY: That's why we might as well try to tie up the loose ends and then meet in short sessions.

MR. STOUDEMIRE: Would this be at 10 A. M. on the 12th?

MR. WEST: Yes. We will write a letter to the gentlemen who are not here and say that we particularly need this session and a full attendance.

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MR. WALSH: I would suggest that you put in a stamped envelope and ask that the cards be sent back, saying whether or not they can be here.

MR. STOUDEMIRE: It might help. It won't hurt.

MR. RILEY: While we are still thinking about meeting on the 12th and the 13th, do you think it would be possible for us to meet at 2:30 on the 12th. To be able to work Friday morning would be a tremendous help to me and to be able to eat a quick lunch and drive down during the lunch hour -- this would suit me.

MR. WEST: That might not be a bad idea with a firm commitment to work Saturday.

MR. RILEY: And then work all day on Saturday -- Saturday afternoon-- and if we were in it, I wouldn't mind staying over until Sunday.

MR. STOUDEMIRE: John, I wouldn't hesitate to send out notices of the meeting for 2:30 Friday -- say 2:30 until 7:00 or something like that.

MR. WALSH: And 9 a. m. the next morning and stay in the afternoon to try to finish up. It would suit me fine. I would only suggest that the letter go out with a little bit more detail, perhaps a card to send back.

MR. WEST: I'll dictate the letter right now..

To: Members of the Constitutional Study Committee

From: John C. West, Chairman

The next meeting of the Constitutional Study Committee has been set for 2:30 p. m. Friday, January 12, in the Wallace Room, State Board of Health, Bull Street Extension..

This meeting has been scheduled as a "make-up" meeting because of the lack of attendance at the last meeting and the necessity of covering considerable ground in order that a report may be ready for the 1968 Session of the General Assembly.

Our proposed schedule calls for a meeting on Friday afternoon to last until approximately 7:00 p. m., to resume the meeting at 9:00 a. m. Saturday morning and continue until the local government section, at least, is complete. This section is one of the most crucial of the entire study and it is essential that we have full attendance or near full attendance.

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Please indicate on the enclosed card if you can attend these sessions.

Encl. (stamped, self-addressed postal card)
JCW.gm

MR. STOUDEMIRE: We are now on Section 26, Mr. Chairman.

MR. WEST: "Charge to juries. Judges shall not charge juries in respect to matters of fact, but shall declare the law."

MISS LEVERETTE: How does that work in Federal Court?

MR. WEST: Sarah, it's right singular. Now Judge _____, God rest his soul, a great one. He took sides in his latter years, and he'd try a case for you if he took sides with you. I was always fortunate. He always took my side except one case and he took the opposite side and I have never had such a miserable time in all my life, but I'll be darned if the jury didn't decide for me.

What I'm saying is that oftentimes the juries resent the judges telling them what to do.

MISS LEVERETTE: It looks to me that there is a possibility of the abusing of that.

MR. WEST: The juries don't let them abuse it. I'm convinced of that. I have seen cases where Judge _____ took my side and Judge _____ too where actually the result before the jury was less than I anticipated.

MISS LEVERETTE: Well, it does have the advantage too possibly of a clarification.

MR. WALSH: I was going to say that that perhaps is the biggest advantage. There are times when you can't explain the principal of law without also utilizing some facts as they apply to that case.

MISS LEVERETTE: I think that is needed in many instances, because the juries are handicapped.

MR. WEST: And the examples that are used oftentimes come close to a comment on the fact if they are . . . Frankly I think it is a matter of constitutional law and ought to be eliminated.

MR. STOUDEMIRE: You could still come back to it by statute?

MR. WEST: Right.

MR. WALSH: I rather agree with you, gentlemen. I think we have reached a position of maturity in our law here in this State and we can move on a step farther.

MISS LEVERETTE: It works out as a practical matter.

MR. WEST: As a practical matter I have no compunction about going into Federal Court even with a bias judge as long as I have a jury, because as sure as the judge goes too far, the jury is going to right him.

MISS LEVERETTE: The great advantage too is the freedom of the judge to clarify. I think you will get better. . .

MR. WEST: I think you would get shorter charges.

MR. WALSH: And also probably eliminate some lengthy deliberations on the part of the jury when they are able to get the law as tied to their facts.

MR. STOUDEMIRE: Delete then? Then we skip over to page 47. Of course, the Attorney General -- we have already agreed to keep him in the Constitution and so on. I think the big question here is, is this the proper place. You know the Attorney General is in the Executive Article.

MR. WEST: Is this repetitious?

MR. STOUDEMIRE: Well in the other place it just says "the Attorney General shall be elected" -- that's all, John.

The question here would be whether you would want to -- "who shall perform such duties as prescribed by law".

"He shall be elected by the qualified electors of the State for a term of four years, and shall receive for his services such compensation"-- and back here in Article 4, it just simply says:

"There shall be elected by the qualified voters of the State" as we now have -- after making all the changes.

MISS LEVERETTE: He is really a member of the Executive Department, isn't he?

MR. STOUDEMIRE: Yes -- "who shall hold his office for a term of four years and until his successor is elected and qualified" and so on.

MR. WALSH: It seems to me like we are saying the same thing twice.

MR. WEST: Let's eliminate it.

MR. STOUDEMIRE: O.K. Now, Section 29. "Solicitor." Let me see. Somebody at the last meeting had something to say about solicitors. I have forgotten who it was.

MISS LEVERETTE: Brantley -- didn't Brantley have something to say?

MR. STOUDEMIRE: According to this, this constitution hasn't been amended -- back to '95 -- they visualized these county courts.

"In the event of the establishment of county courts the General Assembly may provide".

MR. WALSH: (reading) "for one solicitor for each county in the place and instead of the circuit solicitor"..

MR. STOUDEMIRE: I had never seen that.

MR. WEST: I din't know that either.

MR. WALSH: You know that's really what we ought to have. You ought to have a full-time solicitor for all courts.

MR. STOUDEMIRE: Shall we just keep this as it is?

MR. WEST: He recommends that we eliminate that.

MR. STOUDEMIRE: O.K. Now, we still have the circuits, right?

MR. WEST: Right.

MR. STOUDEMIRE: We have got to have something to go with the circuits?

MR. WEST: I like that provision that you can have one per county.

MR. STOUDEMIRE: My feeling would be -- over here on this side when I comment -- that we would draw particular attention to that last sentence.

MR. RILEY: We don't want to put a provision in there to make him full time?

MR. WEST: I think we are going to have to because you still have some in the circuits. I think it ought to be full time.

MISS LEVERETTE: Do we have some that are not full time?

MR. WEST: Mr. _____ practices law on the side.

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MISS LEVERETTE: I didn't realize that.

MR. RILEY: Oh, yes, and _____ has a good practice.

MR. STOUDEMIRE: What do they pay them?

MR. WEST: About ten thousand.

MR. WALSH: I think it is twelve now. _____ has a seven thousand five hundred dollar assistant.

MR. RILEY: We have a county solicitor and he has an assistant.

MISS LEVERETTE: How much are solicitors paid in your smaller counties?

MR. WALSH: All solicitors are paid the same.

MR. RILEY: You know we are talking about circuits generally. As far as changing the circuits around, one weak thing about our circuit, of course, in Greenville and Pickens, is a real unfortunate situation where our solicitor has to go over to Pickens. If Greenville was a circuit by itself and Pickens in with other counties, the General Assembly could change that without delving in the Constitution.

There is no use of our getting into what the circuits are. There is nothing in the Constitution that says that one county can't be a circuit.

MR. WEST: No.

MR. STOUDEMIRE: In fact, it authorizes it. Do you want to continue with the election of solicitors?

MR. WEST: I think so, yes.

MR. WALSH: Yes. Our tradition is such.

MR. STOUDEMIRE: Section 29 is o.k. as it is, right?

Now, Section 30. "Sheriff and coroner".

MR. WEST: I think we ought to leave that for the section on county government, don't you?

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MR. STOUDEMIRE: Yes. If there is some idea of removing it from the Constitution, I think it needs to be discussed.

MR. WEST: I think so too. There is definitely some argument for eliminating the sheriff and the coroner as constitutional officers, particularly if you have the combination of law enforcement in the metropolitan areas.

MR. STOUDEMIRE: Dr. Bain has this listed in the county government.

MR. WEST: It is controversial?

MR. STOUDEMIRE: Yes.

MR. RILEY: I'd like to point this solicitor section out to . . .

MR. STOUDEMIRE: All right.

MR. WALSH: You know, in Spartanburg they have found this question of keeping up with indictments a real problem, so what our delegation did was to find a good secretary. She has an office at the courthouse and she there works for both the county and circuit solicitor. It is working out very well.

MR. RILEY: Do you think we ought to limit each circuit to one solicitor?

MR. WALSH: It doesn't limit the number of assistants. Yes, I think we ought -- you ought not have but one solicitor in one circuit, but you might have three assistants. That could be provided by the General Assembly if the occasion should arise.

I don't believe there is any impediment now in the General Assembly providing and paying for an assistant solicitor. I believe it could be cured by statute now if you wanted to.

MR. WEST: We have Sections 31 through 34.

MR. STOUDEMIRE: Now, this is technical. Professor Abernathy suggests that all of it be taken out.

MR. WEST: I see no reason why it should be kept in.

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MR. STOUDEMIRE: (reading) "Section 31. All writs and processes shall run" -- "Section 32. The General Assembly shall provide by law for the speedy publication of the decisions of the Supreme Court." You would do that automatically, wouldn't you?

"Section 33. Circuit courts and all courts inferior thereto and municipal courts shall have the power, in their discretion, to impose sentence of labor upon highways" -- well, that's automatic.

"Section 34. All matters, civil and criminal, now pending" -- well, that would be too.

MR. WALSH: I don't see how any of that has any part in the Constitution.

MR. RILEY: Let's strike it all out.

MR. WALSH: It suits me.

MR. STOUDEMIRE: All right then, we delete Sections 31, 32, 33 and 34.

You know down in Charleston -- I was working with them on a form of county government. They had the feeling that the old constitutional officers would go along with being appointed.

They were saying something to the effect that the clerk of court was well qualified to be clerk or some such statement, and therefore, based on this, that he would perhaps take his chances with the county board rather than he would election.

Mr. Chairman, Professor Abernathy says eliminate all of Article VI on arbitrations and all these other things.

The only thing that comes to my attention is that the General Assembly can change the venue without a constitutional mandate if it wanted to, couldn't it?

MR. WEST: I like this provision that you must be tried where the offense is committed unless there is a change of venue. . .

MR. STOUDEMIRE: John, could we rewrite this -- or in other words express the idea that the person has a right to be tried where the

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offense was committed, unless a change of venue has been granted -- and include that somewhere in the declaration of rights?

MR. WALSH: That would be the solution to it.

MR. RILEY: Where is it in the Constitution?

MR. STOUDEMIRE: On Working Paper #3, page 50, about two-thirds down in Section 2.

We could turn the wording around, I think, and make the "defendant shall be tried in the county where the offense was committed".

MR. WEST: Right.

MR. STOUDEMIRE: "Section 3. Law and equity." Is there anything to that -- "Justice shall be administered in a uniform mode of pleading without distinction between law and equity."

"Section 4. Every statute shall be a public law, unless otherwise declared in the statute itself."

MR. RILEY: I don't quite understand. If you say that justice shall be administered without distinction between law and equity, how can you say in an equity matter you have no jury and in a law matter you have a jury?

MR. STOUDEMIRE: Well back up -- we are kicking out arbitration.

All right, then, do we want to delete Section 3?

MR. WALSH: One thought that I would say in regard to deleting this thing of arbitration -- I think we probably ought to say we favor the statutes that permit reasonable arbitration or disputes, but we do not feel that it is a matter which ought to be included in the Constitution.

MR. STOUDEMIRE: By checking -- make it stronger. . . O.K. Section 3 and 4 delete. Now on this Section 5 as far as I can see, it is the whole set-up for codifying the code -- publishing it -- and the Code Commissioner and so on, but really, I don't think it is constitutional.

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MISS LEVERETTE: Did we delete Section 1?

MR. STOUDEMIRE: Yes. We deleted Section 1, and we deleted all of Section 2, except that sentence beginning with "Unless" and we deleted Section 3 and Section 4, and we are deleting Section 5.

Now, "Section 6. Prisoner lynched". I haven't read that thing in so long . . .

MR. WEST: Greenville County had to pay, didn't they?

MR. RILEY: Yes.

MR. STOUDEMIRE: Do I hear a word from Greenville to take it out?

Does a man really have -- I know why it was put in there and so on, but does or is there any more right to collect bond because of a mob killing as opposed to a gangster killing?

MR. RILEY: I think that ought to come out.

MR. WEST: I think so too.

MISS LEVERETTE: Well, now Section 5, back here on Codification of laws -- did you delete that?

MR. STOUDEMIRE: Yes.

MISS LEVERETTE: The only thing you have now is course of requirement -- maybe it's in the laws and statutes too, but the requirements are a ten-year code and recodification -- every ten years, which I think important.

A
MR. WEST: Rather than having ten-year codification, maybe we ought to have a section saying that the General Assembly shall provide for the codification of all laws passed and such codification shall be kept current. The trend is away from recodifying every ten years.

MR. WALSH: I think we ought to have a statement like that, John. Just say that we shall codify the laws.

MISS LEVERETTE: That was what I was getting at.

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MR. STOUDEMIRE: That would be part of the Legislative Article, wouldn't it?

MR. WEST: I guess it would be.

MR. WALSH: This thing of having a code commission. . . is completely outdated.

MISS LEVERETTE: The majority of states are putting out now what you might call, more or less, permanent codes and they handle it by replaced volumes rather than recodification.

MR. WALSH: I think that's what we undoubtedly will eventually come to.

MR. WEST: You know we're putting the code on a computer now, don't you?

MR. WALSH: Well good. This fellow from Pittsburgh -- University of Pittsburgh put all the municipal codes in the State of Pennsylvania on computers -- this fellow spoke and I heard him -- they say this thing is terrific.

MISS LEVERETTE: Well, you know they are working at Pittsburgh and I think it is Northwestern on the case aspect of this thing -- you know something modeled on the West Digest proposition that would eliminate all the mechanical work.

MR. WALSH: If you have a certain phrase you want to get cases on, you just turn around in your desk and use the machine.

MISS LEVERETTE: We were discussing the building plans for the Law School the other day. We are interested in being sure that facilities necessary for that type thing are being taken care of -- if anything had to be build in.

MR. WEST: At least one lawyer in Columbia is seriously considering trying to computerize all South Carolina decisions, which I think would be a terrific thing.

MISS LEVERETTE: There is definitely a great trend along that line. I know the National Law Library Association has had a lot of sessions on it and are working with various groups with case law primarily.

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MR. WALSH: It will certainly eliminate all that tedious work.

MISS LEVERETTE: You could take the whole American Digest system and sweep right through it.

MR. RILEY: Would it be a service which would be available by the month?

MR. WALSH: According to this man from Pittsburgh -- their idea -- the thing is, if any town wanted to know about an ordinance in every town, they pay so much a month and all you have to do is put it in that machine and they print it back out -- every ordinance dealing with dogs, for instance.

MR. STOUDEMIRE: Gentlemen, let me ask you for about a half a minutes guidance.

Next time we meet, my thinking is this -- we held over solicitors, we held over sheriffs and coroners. All right, start off with those. My feeling is now that we should not reopen all these other things we have decided upon today and review them, because we might be another half a day. Am I right?

MR. WALSH: My thought is this, that if it is possible to get these short minutes out -- I don't know what you have behind now.

MR. STOUDEMIRE: We have another set.

MR. WALSH: Well, if you could just jump to this -- these minutes won't be very long. Just produce these and get them out to the members or summarize the decisions -- they need to be made aware of these because we are basically not a quorum.

MR. STOUDEMIRE: I was thinking there was one thing I would do. I would ask Mr. Workman to come by the office and then I would bring him up to date on this. Let's face it, Bill is a pretty good judge.

It might be that by the next meeting I would be able to have Professor Abernathy get on this, bring it back together and be through with it. I believe with a little pressure on him I could do that and could bring it back and we could agree.

MR. RILEY: By the way, Bob, you have a done a real fine job and we appreciate it.

MR. WEST: Another thing, along with our letter which I have just dictated to go to the members of this committee, do you suppose you could prepare a proposed agenda which would wind this up and say this is the agenda we must complete before our report is ready.

MR. WALSH: I would say this. I think the final thing is to compile and submit to everyone the entire document. I know there are several things which have occurred to me that we did not consider before -- we didn't think of before.

MR. STOUDEMIRE: We have done the declaration, we have done suffrage, we have done legislative, executive, judicial, jurisprudence -- o.k. county and municipal, and have you gentlemen given any thought to this business of exempting manufactories. That will come up next. We have done finance and taxation, education, the militia and eminent domain.

MR. WALSH: This thing of eminent domain is something I have mentioned to John before -- about taking more than is actually needed -- the so-called remnant theory. Our cities are being hurt very badly -- take a building and destroy the whole thing and have a third of the land left. Why shouldn't you take the whole thing and use that third for beautification?

MR. STOUDEMIRE: John, now we do have Article XVI on Amendments -- it's not grossly complicated. I can do a little research on it. We have Article XVII on Miscellaneous. Qualification of Officers, we have already handled. Claims against estates, whatever that is, shouldn't be serious. Divorce -- and there is something about a Supreme Being. And Removal of Causes, Lotteries, Officers gambling and betting. Then we have two Articles of Amendment -- we'll have to take those out. We have two sections of the Constitution that nobody knows we have.

MISS LEVERETTE: Didn't we say something at the last meeting about getting some information from this committee that is working on county government?

MR. STOUDEMIRE: I understand they are meeting behind closed doors. We should make a great effort to get John Lindsay here, so that he could be the link between the two.

MR. WALSH: You might be able to call him and tell him how much we would like to have him. It would be very helpful if we could get him.

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MR. STOUDEMIRE: The next meeting, then, on the agenda, we'll pick up with solicitors and the sheriff and get rid of that. Then we will get right into local government.

MR. WEST: Well, actually, we are going to have the sheriff under local government.

MR. STOUDEMIRE: Yes. That's right.

MR. WALSH: John, I feel that there are several things that we have said we will take up in local government and I don't know if I recall all of them.

For instance, the possibility that municipalities will have the right to tax things other than property tax, etc. that we were going to discuss. We won't find things like this in the outline item by item -- also the preventing of duplication of taxes among local governmental units is something Huger thought we had better take up in local government.

MR. STOUDEMIRE: We have not come to a fixed conclusion on urban renewal.

MR. WALSH: We said we would consider it in local government. It might be that you ought to outline those ideas as being things to be considered along with local government because that is real serious.

MISS LEVERETTE: Is it possible, Bob, in your agenda, to include and note those things we have postponed?

MR. STOUDEMIRE: Yes, I'll get those things.

MR. RILEY: I thought in the urban renewal area that we had arrived at some language that we tentatively approved which was permissive but limited.

MR. STOUDEMIRE: We were dickering with the New Jersey concept, but we never did decide.

MR. RILEY: I think we had the tentative language which we more or less approved or were considering.

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MR. STOUDEMIRE: I asked Dr. Bain to handle that and he handled it only as it applied to home rule cities -- that doesn't take care of Rock Hill -- York County and Spartanburg, when it's a county thing, isn't it?

MR. WEST: That's right.

MR. STOUDEMIRE: So that doesn't quite handle it.

MR. RILEY: Spartanburg is not county, is it -- they say in the city in Spartanburg, don't they?

MR. WALSH: Towns or cities. Cowpens could have urban renewal. It is any city in Spartanburg County.

MR. WEST: Bob, now let me get a little bit of guidance from you. Do you think it is possible on these extended meetings on the 12th and 13th to finish our first run-through?

MR. STOUDEMIRE: Would you delay making a final statement on search warrants until that time?

MR. WEST: I am trying to get an overall sequence of time of procedure. Let's say, that we will finish our preliminary going-through the Constitution on the 12th and 13th. Then then the next step will be up to you -- how long rough will that take?

MR. STOUDEMIRE: I don't know, John.

MR. WEST: Well, let's assume it will take two weeks. Do we need another meeting -- do we need to circulate that to the members and then have another meeting before we send out these drafts to the various interested organizations?

MR. STOUDEMIRE: In other words, you need to agree that what I have here . . .

MR. WEST: That this has been what we agreed on.

MR. STOUDEMIRE: That's a direct quote from the old Constitution that we ought to be in agreement and that's what we did agree to.

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MR. RILEY: I frankly think that once you've brought it down into that form, that the best thing for us to do is to immediately meet. There is no use sending that out and giving us two weeks.

MR. STOUDEMIRE: This is what I thought I would do -- not to white-wash the others, but when I get through here, I thought that maybe Sarah and Bill and one or two others who are around Columbia could get together and therefore they would agree.

MR. WEST: That would save us a hole lot of time.

MR. STOUDEMIRE: They would agree -- you know sometimes you are not quite sure. . .

MR. WEST: In other words, Bill, Sarah and you can do a preliminary re-survey of the revised draft and then sent it to us a couple of days in advance. When we have the meeting, we'll go through it and hash out all the problems that may arise and take votes on any kind of controversial issues like the election of public officials and all that.

MR. RILEY: Do you think we ought to have public hearings?

MR. WEST: That' the next thing I wanted to suggest. After we have agreed tentatively on what our recommendations are, then I think as a matter of procedure we want to send this draft to as many interested and concerned groups as possible -- make it available to the public, particularly to the Bar Association and Municipal Association. I think our members should think of persons and groups and organizations who should be sent a copy, with a specific request for comment.

MR. WALSH: Of all people, I think the Attorney General should have a special invitation to look the entire document over.

MR. WEST: To start with, we must send a copy to every judge, to every Governor, to maybe all state officials -- all state elected officials. Whether we should send it to every mayor of every town, I don't know.

MR. RILEY: They have an association of county attorneys, an association of city attorneys, association of probate judges and association of auditors and treasurers.

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MR. WEST: We are certainly buying ourselves some trouble by sending it to all these.

MR. RILEY: I know it.

MR. WEST: But I think it is an essential procedure.

MR. RILEY: Then we have got to bow up our backs.

MR. WEST: Along with the draft, we ought to send a notice of a public meeting to be held ten days or two weeks or a reasonable time thereafter, and tell them they are welcome to appear or welcome to give us any written comments.

MR. WALSH: I would just throw this in -- ask that if they wish to appear that they would let us know beforehand.

MR. WEST: Right.

MR. WALSH: And give a written summary of their positions so they could be communicated to the members beforehand.

MR. RILEY: And all statements should be limited to ten minutes.

MR. WALSH: I don't know about limited -- but I find this -- a fellow will get up there and sorta' filibuster and never say anything. Require that it be put in writing.

MR. WEST: And tell them at the public hearing we request they give us a written statement five days in advance of their objections, suggestions or comments, so that we may communicate these things to the members. If they desire to be heard orally, we will be happy to give them a reasonable time not to exceed ten minutes.

MR. RILEY: Are we planning to submit, in the final draft, say, we are fifty-fifty on something, and it doesn't matter really one way or the other -- will we plan in that final draft to have an "A" or "B: -- that either one is satisfactory to our group?

MR. WEST: I would hope that situation would not arise. I think in the comments, we could say that there is a division in the opinion of the group, but the majority felt that this was preferable over that, or it was the consensus of the group that while there was a difference of opinion, that the matter was not sufficiently important to warrant a minority view.

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MR. RILEY: We will have annotations?

MR. WEST: Yes.

MR. STOUDEMIRE: What we have done thus far -- it will just take a minute to show you. We have approved the old residence section.

"Temporary absence from the State shall not forfeit a residence obtained."

Then on the right will be your comment. The committee recommends that this section be retained in the declaration of rights, without any change. Since residence applies to other than election rights, the committee thought that it should be stated in the declaration of rights.

That is the time of comment I have been making.

MR. RILEY: Now, on the left, is the way it is now in the Constitution?

MR. STOUDEMIRE: No. That's the way it will be.

MR. RILEY: Is there any way to show what it is now?

MR. STOUDEMIRE: Not at this stage of the game. Now, when we make the final presentation, I think we will have to do that.

MISS LEVERETTE: In this thing I have been talking to you about, Bob, I think it is in Connecticut -- they listed every section and put to the side "unchanged" or "transferred" or so on in the final.

MR. STOUDEMIRE: I think that when we make a final draft that Section 5 as we have adopted it now -- we will probably put the comment just below it, like the annotated code -- the the old section over on this side.

What I want to do now, and I think it is worthwhile that each member of the committee have a straight copy of what we have adopted, without anything to disturb his reading. He can look over here if he wants to see the comments, but I think each member needs to be able to read through this whole draft without a whole bunch of stuff stuck in between, if so, he is surely going to lose his thoughts.

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MISS LEVERETTE: What you really will do is show the action the committee has taken?

MR. STOUDEMIRE: Right. You are going to have a working paper to get approval -- that what I have on the left is our thinking, and then we'll have to come back later and re-do it on whatever the best format is upon which we can agree.

MR. RILEY: I feel that in the final publication, as you indicated, we ought to have on the left and what it is, and on the right what we recommend, and underneath, the comment.

MR. STOUDEMIRE: As I talked to John before, I think I am going to put one of graduate students on this -- one with not too much to do.

The present Constitution shows you already the Constitution of '68. In some of these cases I think it might be helpful to show that this concept originated in 1790 -- that the language in a good many cases is different. I am dickering with the idea of tracing some of these things back to '90 -- the thought -- not necessarily the same words. I'll have to check that and see how it comes out. It may cause more harm than good.

MR. WALSH: Did you ever read these articles that Mr. Maxie C. Collins writes in the Southern Christian Advocate?

MR. WEST: No.

MR. WALSH: He has been writing on the history of local government in South Carolina. Do you know who Maxie Collins is?

MR. WEST: Oh yes.

MR. WALSH: Anyway he -- I don't know where he gets his material, but it is interesting.

MR. WEST: Maxie is a very capable fellow.

MR. WALSH: He says the 1868 Constitution was the best we have ever had.

MR. WEST: It has now reached the time when we agreed to adjourn, so that we might get lunch and be able to get to Mr. Smith's funeral.

This was agreed to and the meeting was adjourned at 1:05 p. m.

MINUTES OF COMMITTEE MEETING

The Committee to Make A Study of the Constitution of South Carolina, 1895, met in the Wallace Room of the State Board of Health, Columbia, South Carolina on Friday, January 19, 1968 at 10:00 a.m.

The following members were present:

Senators-

Richard W. Riley 10
Marion Smoak 10
John C. West, Lieutenant Governor 10

Representatives-

J. Malcolm McLendon

Governor's Appointees-

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

Staff Consultant-

Robert H. Stoudemire

Also present was Dr. Chester Bain, University of South Carolina who had prepared the Working Paper on local government.

MR. WEST: The meeting will come to order. I am glad we have such good attendance in view of the fact that we had to postpone last week's meeting. I am sure it is an inconvenience for you to come. We are in the position where we have got to push ahead in order to get our report ready and complete the first session of our work. What I want to ask and get the Committee's reaction--- we are possibly in sight of a reporting date and I was wondering if you had given any thought to the method. As we get through, there is more and more interest among the Committee members, as well as the public. We are obligated to make a firm recommendation as to which method we think should or should not be used. We could have a survey made of the methods that are possible. The methods used in other states. Maryland is in the process now. I suggest that we get our research people to do a compilation of what other states that have attempted a constitutional revision have done and with what success. The question of cost has come up and we need to know what a convention would cost. This is information that we ought to have regardless of which method we use.

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MR. STOUDEMIRE: There is only one figure that will mean anything at all. That will be Maryland and perhaps Rhode Island. The New York would be so out of line with our set-up.

MR. WEST: Just whatever information you think might be helpful.

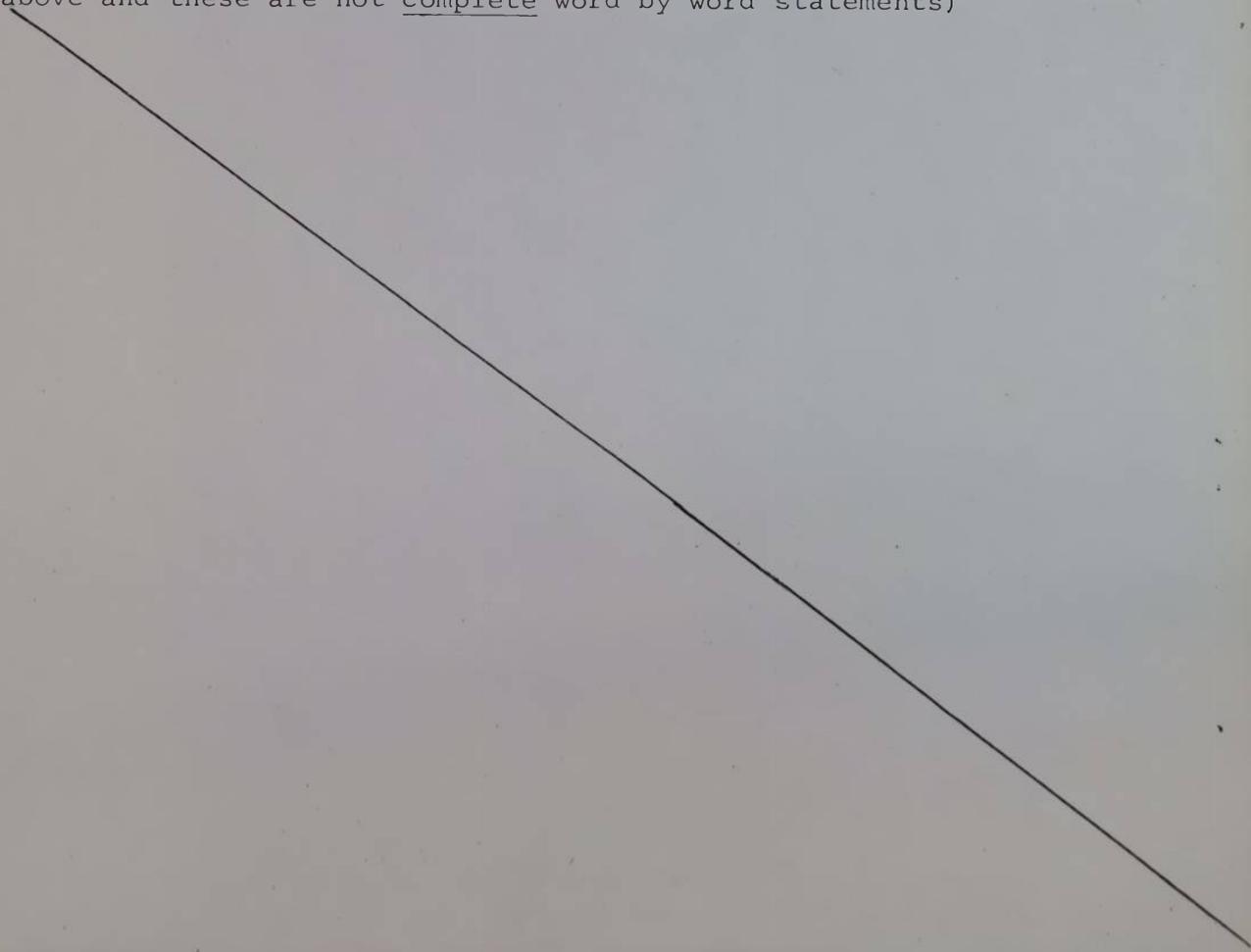
MR. SINKLER: I am delighted and ready to vote whenever you think it appropriate.

MR. STOUDEMIRE: A complete state by state analysis is at the printer's now.

MR. WEST: All right, let's see. Today is reserved primarily for local government. We have a few items...

MR. McLENDON: Let me bring you up to date on the court system. The House Judiciary Committee has a recommendation in hand from the Judicial Council and Mr. Belser has appointed a sub-committee. It probably would be beneficial if that sub-committee could work with us.

(The recording machine was not recording properly during the above and these are not complete word by word statements)



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It's their feeling that after next Tuesday when Peter McGee reports back from all the Circuit Judges in reference to the Judicial Council's recommendation that he appoint a sub-committee to study the recommendation of the Judicial Council and that it probably would be beneficial if that Committee would work in tandem with us somewhere down the line because that Judicial Council recommendation is directly on the part of the Judicial system of the State and from what Peter said, he didn't name the judges, but he said the seven or eight who had answered, he has indications from them that they approve of that recommendation and I recall as Heyward was reading it very hastily, one or two of the things that we had proposed... they did not propose or thought differently about so I pass that on as information to you.

MR. SINKLER: Wherein were the points of difference?

MR. McLENDON: I can't recall right this present moment.

MR. WALSH: One of them, I have talked with several, I think one of them deals with whether there would be judges at large. My recollection was that we did not determine whether they were at large or whether they would be, say, just two in the circuit here in Richland.

MR. WEST: We made the tentative decision that they would be at large.

MR. McLENDON: I think that's the difference. They had recommended that they live in the circuit where the load was and that the circuit and the Supreme Court had the authority to reassign. Our idea was more general.

MR. WALSH: I had forgotten whether we had definitely said...I knew we thought there ought to be four or five more judges and no more circuits.

MR. WEST: Maximum of five at large.

MR. WORKMAN: I think our "at large" wording was adaptable to the need because we said in the case of the case of judges of a judicial circuit---there should be one judge resident within each judicial circuit. There would be five additional judges who would be appointed regardless of residence so they could be within the given circuit.

MR. STOUDEMIRE: My memory is that Professor Abernathy in doing the study, he did have a series of conferences with Mr. Dreher at the Law School and Dreher, I am told, did most of the work for the Council and these things together and my memory again is that really we're not too far apart. The approach that I use is that both

recognize the need of more judges. It would seem to me, based on that premise, there could be agreement without too much difficulty as to the method you actually use to get them.

MR. WALSH: One of the arguments---we just discussed it with several circuit judges over coffee and one of the arguments advanced was that circuits, say, like Richland, even Greenville and Spartanburg, there are times when your non-jury matters far exceed your jury matters and involve far more money and yet it's desirable to have a full circuit judge hear these.

MR. SINKLER: Have a what---

MR. WALSH: Have a circuit judge hear these.

MR. SINKLER: Oh, I know that, but did you say resident circuit judge?

MR. WALSH: Well, have a circuit judge there and their idea was that you wouldn't exactly know when these would come up in order to request it from the Chief Justice, in advance. That if you got a lot of business like Richland and experience has shown that you have it, then you just ought to have two judges.

MR. WEST: As a small county fellow, I just have to say that's being a little selfish. Most of the large counties have the resident circuit judge. The point is that if you get them all in Greenville, Spartanburg, Columbia or Charleston, you're inconveniencing a great number of members of the Bar in limiting them where you might otherwise not.

MR. WORKMAN: Well, doesn't this all lend itself---

MR. WALSH: Should be allocated on the basis of where the need is.

MR. SINKLER: Isn't that the theory of what we've done? We've got the Chief Justice determining that.

MR. WORKMAN: Aren't we just concerned with the broad principles of the thing?

MR. MCLENDON: I don't think there's a great deal of difference. We ought to have a copy of whatever Heyward's got. It wasn't confidential I don't---

MR. STOUDEMIRE: Mr. Chairman, may I make this suggestion? That when we get through with these points that we haven't decided and Professor Abernathy's going to re-draft this thing in view of what we have decided, then it would seem to me that we could save time. In the meantime, we could get what the House Judiciary

Committee has in mind and when we review the final draft, it could be, if this is still is out---

MR. WEST: We're wasting our time discussing things that may not even be an issue.

MR. STOUDEMIRE: I could, very hurriedly if you wish, bring the other people up to date on what we did last time. For those of you who were not here last time, we delayed the clerk of the court, the solicitors, the sheriff and the coroner, primarily, over the issue of whether they were constitutional, whether they ought to be elected or what and there was enough disagreement among the... well, not disagreement, but the sub-committee as I call it, was not sure enough of positions to proceed without the full Committee, but on the other things in the court that were not decided before. We agreed on the judgment of, statement in the Constitution on judgment of the Supreme Court, to really leave a statement in there, but to not make it quite as pointed as it is now existing. In other words, that they will publish a report of the cases. Compensation of the judges we left about the same thing as it had been. Qualification of judges, leave them as they are, but extend it on down to any person of a court of record would have to be an attorney and so forth and so on. Vacancies. Filling vacancies. The main thing there is to expand to take care again of your county court and other courts of record. Interchange of circuits we left. The section in the Constitution on the jurisdiction of Court of Common Pleas and the jurisdiction of General Sessions---no serious thing there except we thought it would be better if we combined the two into one broad statement of jurisdiction. We left the thought that the Court of Common Pleas should sit twice and Section 17 on Decisions of Supreme Court, when they must file them. We thought we ought to delete this. It says sixty days now and you can't enforce the thing anyhow was the reasoning there. All right, by prior agreement, I think, we eliminated all of the sections on the magistrates.

MR. WORKMAN: This, then, takes magistrates out of the constitutional category and puts it exclusively in the hands of the Legislature.

MR. STOUDEMIRE: By general law. Compensation of all other officers we omitted. This was a statement that really doesn't say anything that the General Assembly can't already do. We thought that the statements on trial by jury, jury in inferior courts, grand jury and so on, really is a basic right and should be transferred to the Declaration of Rights and brought together with the other statement on jury. In essence, changing very little except we did take out the ages of twenty-one and sixty-five. In other words, a juror would not be restricted to those ages which would leave you a question, perhaps, if you lowered it to eighteen, but would take

away the restriction on the elderly.

MR. WORKMAN: This, then, would mean that jurors could be, those who are electors would be qualified as jurors, regardless of their age.

MR. STOUDEMIRE: Then, I would say that if you take it out, the General Assembly could pass a law which says that you---if you don't want eighteen year olders, if you ever get the voting age to that. Powers at chambers. We kept that statement essentially as it is, but added a sentence, "Judges of all courts shall have all powers at chambers as in open court".

MR. WORKMAN: Let me ask about that. One of the provision of the Courts says that all courts shall be open and I'm just wondering whether or not by giving---granting the powers in the chambers it's going to mean that transactions can be conducted in chambers that the public or interested parties are not aware of and should be aware of.

MR. McLENDON: I don't think court held at chambers is private anyway. People are just not interested in going. I think you would have just as much right to go into chambers with a litigation as the lawyers. I don't know of any...

MR. WALSH: As I understand the phrase "at chambers", it simply means the formal, statutory and designated term of court is not in session, he has such powers.

MR. SINKLER: Why don't you put "in open chambers"?

MR. SMOAK: It doesn't mean he's locked in his office.

MR. SINKLER: Use the word "open".

MR. WORKMAN: How about doing that?

MR. McLENDON: I think you're right.

MR. WEST: The question might come up. Suppose you had a fellow who wanted to plead guilty and didn't want the newspapers to know about it.

✓ MR. STOUDEMIRE: You want the thought "chambers", but it must be public. Then, the Charge to the juries, we deleted that which I think would take us back to the position of the Federal rule. In other words, "jury in respect to matters of fact shall declare the law". The consensus last time was to remove that from the Constitution. //

MR. McLENDON: You're going to have a powerful problem with the General Assembly. You know we got into that trying to adopt the Federal Rules of Procedure. In addition to this business of examination of the other fellow's papers, this thing was the biggest problem.

MR. WALSH: I don't know. I believe it's more and more coming around to the feeling though that the Federal Rules are all right.

MR. SINKLER: Well, now, you've got a practical problem, though. I envision that this is going to take action by quite a tremendous majority. That's one reason I felt perhaps we ought to really vote on our recommendations as to how to submit because a lot of little things like this might affect our judgment in how we word this thing. After all, we want to accomplish some over-all good, we may have to ---some of the little things. Frankly, I'm one of those "single shot man" on the amendment process, going through the General Assembly and not the Convention. So that my thinking with a matter of this sort would relate to my idea of how this thing is going to happen. If you are going to do it Convention where you had---a totally different situation. You ultimately end up with the majority vote controlling, but I don't think that is going to happen, at least from what I can sense of the General Assembly's reaction is that they are just not going to go for a Constitutional amendment. If they take it at all, they're going to take it on the single shot idea that really is Judge Lide's idea, I suppose.

MR. WORKMAN: What is the precise issue on this, now?

MR. STOUDEMIRE: "Judges shall not charge the juries in respect to matters of fact, but shall declare the law."

MR. WORKMAN: That is the law now, and this would be removed under the---

MR. McLENDON: They can charge on the fact as well as the---

MISS LEVERETTE: Do you think that since---I don't remember how long ago that bill on the civil procedures in the Federal Rules was brought up---do you think there has been any changes as far as the Bar is concerned in regards to that. That's sort of a bell-wether to give an idea of what---

MR. McLENDON: I don't see any change. Dick, what do you see down there? Marion, you weren't down there when we had the hassle before with the Federal---

MR. RILEY: The House always passed it rather easily.

MR. WEST: The Senate you had about three or four die-hards in there.

MR. WALSH: One feature about it that we ought to keep in mind and that is that even removing this, it does not take from the General Assembly the power to still carry this on as a part---

MR. SINKLER: I don't know whether it does or not. I think if you take it out of the Constitution, I think the judge---this is a document of limitations. Now, maybe the General Assembly could come along and pass a statute which would carry forward the same law.

MR. WEST: Well, wouldn't our best approach here be, if we feel as I sense we probably do, this should be deleted and then if the practicalities of it---I don't think it's a major matter. It's like the election of the Secretary of State. I don't think that it is important enough to jeopardize the rest of our work and if it appears that it is going to be a political barrier of substance, well, let's change our minds.

MR. McLENDON: There's virtue in it now because of the massive registration of everybody in the State and the fact that jurors now just walk in the court that never walked in a court before. We at least had some sort of selective process before. Now, you don't have any so it may be best that the circuit judge have some authority or some right to comment on the facts because the jurors---Let's leave it like you have it then. //

MR. WEST: Leave it.

MR. WORKMAN: Leave it with the opportunity to re-insert it. /

MR. STOUDEMIRE: All right, then the Attorney General. There's no argument there, but that it ought to be probably put under the Executive Article rather than the Court Article. Then, we had some section of the Constitution now on writs, and indictments, decisions of Supreme Court, another section pursuant to labor on highways and matters now pending---the Committee thought all this was just so much language that actually meant nothing and decided that the best thing to do would be to leave that out. Then over on the section of Jurisprudence, the next Article, it concerns arbitration, change of venue, law and equity, statute public law and codification. Now, the feeling last time was that all of this could drop, but two sentences or two thoughts. That there still should be a statement on the change of venue, but this should be a declaration of rights subject and that there ought to be a section that says that the General Assembly must keep the laws updated and codified, but that this ought to be transferred to the Legislative Section. //

MR. McLENDON: Why would a change of venue be a declaration of rights?

MR. STOUDEMIRE: Because it concerns my fairness of trial.

MR. WORKMAN: That's the main, underlying purpose of it to safeguard the right--

MR. SINKLER: I think that's appropriate to have in there.

MR. STOUDEMIRE: As to new matters, the Committee last time agreed that the Supreme Court after hearings and so on ought to have powers to remove judges. In other words, a substitute measure, other than impeachment, for misconduct, failure---persistent failure to perform and retire any judge upon the finding of disability seriously interfering with his duties. A justice shall not sit in any hearing involving his own removal. Implementation and enforcement of this section may be by rule or order of the Supreme Court. This was taken, really, from the---well, a number of your new constitutions have a draft very similar to this. Now, that leaves us down then---

MR. WORKMAN: If I recall correctly, this is in line with what Sol Blatt suggested during his meeting with us. There should be a degree of discipline and authority exercised over the circuit judges and their conduct---

MR. SMOAK: What is the general thinking in regard to that? Just that there should be---

MR. STOUDEMIRE: It would be a safety valve. For instance, if you have a judge who has had a stroke---I don't think there is any way of getting rid of him now, is there. That, if you really had one with misconduct in office---

MR. SMOAK: Would have to be a pretty extreme case.

MR. STOUDEMIRE: Well, I should think so. Yes.

MR. WORKMAN: Well, what about judges who become chronic drunks? This would afford some way to get rid of them short of impeachment.

MR. STOUDEMIRE: It does provide after hearing. It does give a safeguard.

MR. SMOAK: Is there any way to work the word "retirement" in there to soften that a little bit or something?

MR. STOUDEMIRE: You mean retirement language rather than removal?

MR. WEST: Or cause mandatory retirement or removal as the judges may---

MR. STOUDEMIRE: The Supreme Court shall have power, after hearing, to retire any judge from office. //

MR. WEST: yes. Because actually if a man were, say, arterosclerosis is a very common thing now and we've had a couple of judges that---

MR. SMOAK: This might give the Supreme Court a lot more feeling for using this in an appropriate case.

MR. STOUDEMIRE: Mr. Chairman, we are in Section 27 on the Clerk of Court. We're talking about the county clerk.

MR. WORKMAN: Let me ask you one thing, going back to this retirement thing. If, a judge now who is in a situation where he is entitled to some degree of retirement is found to be subject to removal because of chronic drunkenness or whatever, he still, under existing law, would have the right to benefit from whatever retirement credits he's got even if he were to the point of being indicted and put in jail, wouldn't he?

MR. WEST: That would not jeopardize---

MR. SMOAK: I think that's right.

MR. SINKLER: If you use the word "retire" you've got to carry forward the thought of a successor coming and stepping in. Would your language do that?

MR. STOUDEMIRE: You've got another provision in the Constitution to fill vacancies which the Governor can do for less than a year, I believe.

MR. WEST: We are down to the question of whether we should leave the Clerks of Court, the Solicitors, Sheriff and Coroner as Constitutional officers.

MR. SINKLER: Of course, coroner is ridiculous.

MR. STOUDEMIRE: My memory really was that on the Clerk of Court we had some discussion as to the dual nature of this person. In most counties he is the registrar as well as the court official and this, I think, sort of influenced some thinking.

MR. WORKMAN: I don't see that there is any fundamental character of their jobs under present circumstances that require Constitutional recognition. It perhaps would have been back during the days of

old England when the coroner did amount to something as a representative of the Crown and the sheriff was the chief law official. I don't believe these things are necessarily constitutional in nature.

MR. STOUDEMIRE: Let me throw this out, more or less from the practical standpoint. Would we be able to get across the point, really, that a removal from the Constitution does not necessarily imply that you are recommending a change of method of selection? You see, to me, to remove the sheriff from the Constitution does not say at all that you are for or against his election. That you just simply don't think that this is a Constitutional job.

MR. WALSH: Yes, and that there are some circumstances in some areas whereby the General Assembly could say that this is going to be an appointive office.

MR. WEST: I think you've got a very definite point, Bob. Unfortunately, word may get out with respect to magistrates and sheriffs the fact that we remove from the Constitution means that we want to do away with the job. Of course, there is no basis for that. It is simply a fact that it shouldn't necessarily be in the Constitution.

MR. SINKLER: Why can't we put something like, "The General Assembly shall provide" which, of course, they can do without our saying it, to sugar-coat the pill, for clerks of court, sheriffs and coroners. I don't know whether you are familiar with the situation in Charleston, but-----

MR. WORKMAN: The flaw there would be, Huger, the mere fact that you require the designation, by whatever method, of a sheriff.

MR. SINKLER: No, I was going to even try to loosen that up.

MR. WEST: I frankly think it's the thing to do. Now, we may create an awful political turmoil because of this misunderstanding.

MR. WALSH: John, I was in a meeting yesterday and normally, out from in the county, they have the feeling "elect everybody". Talked to man and he said, we've got so many people elected, we've just got to bring more efficiency in county government. They're beginning to see that.

MR. WEST: This is going to go over into the local government section, but undoubtedly you need to leave the door open for consolidation of functions, especially law enforcement because the criminal doesn't know where the county line or the city line is.

MR. WORKMAN: Getting this thing out would be a great step forward on effecting any consolidation of municipal and county government as Charleston is now thinking about as we are in Richland County and elsewhere. It would also remove much of the basis for an awful lot of controversy that's been in the General Assembly in the last twenty years when you get rural police forces, etc. and you're stuck with a sheriff and the only way you can do frequently is to do like you've done in _____, is simply completely by-pass him and leave him to serve writs and collect fees and then all law enforcement is in the hands of the rural police force or whatever it's called. If we could extract that requirement from the Constitution, I think we can move forward if we do it in such a way that it doesn't require--- make the courthouse crowd get---

MR. STOUDEMIRE: Let me say that I worked with Charleston County on preparing a constitutional amendment to set up a metropolitan type government there which will probably be introduced in the Legislature before too long. In doing this, the amendment is really three times longer than what it really ought to be---if you are going to bring this thing about, then you have to take care of all these constitutional gimmicks whatever they may be.

MR. RILEY: The only thing that concerns me is if you look at what the Constitution, basics that the Constitution ought to provide, I would think that it would be in keeping with what we want to have the Constitution provide that there be some chief law enforcement officer in a county or sheriff or some provision ---as far as requiring those things to exist---it would look to me like that would be proper and then not to go on and tell the General Assembly how to do it.

MR. SINKLER: I think Bob has brought up an awfully good point. If we do have this consolidation of government, we don't want anything in the Constitution that says that you've got to have a sheriff of the city and county of Charleston.

MR. STOUDEMIRE: It is my feeling and Mr. Outz over here might want to comment. If you combine Richland County government and the City of Columbia government, I don't think the City of Columbia is going to take a sheriff as their chief law enforcement officer as opposed to the Columbia Police Department.

MR. RILEY: Somebody will be in charge.

MR. WORKMAN: I think that is so essential a function of government, Dick, that you don't have to tell either the Legislature or the governing board to have a chief law enforcement officer.

MR. RILEY: Isn't that what the Constitution is supposed to have, is the essentials? I'm not married to what I'm saying, I'm just thinking out loud. It looks to me like that's a basic thing and certainly everybody will, but it looks to me like the Constitution ought to just simply state that.

MR. WORKMAN: That they shall have a chief law enforcement officer.

MR. WALSH: Under the circumstances we find ourselves, I think we would be better off to leave it out because the chief barrier obstacle for achieving more efficient county government are these so-called constitutional officers and they say, oh, you can't do that because it's against the Constitution. They stir up an awful lot of dust that doesn't have much substance.

MR. RILEY: What if a city and a county wanted to vote out, just have the city law enforcement people out in the county---would they have any guarantee that there would be a---the General Assembly could---

MR. WEST: Could you put in a general provision, Bob, that says "The General Assembly shall provide such officials as may be required to enforce and prosecute the laws"---

MR. WALSH: Something like that might be the answer.

MR. RILEY: Wouldn't that be proper, Bob?

MR. SMOAK: That might be a good valve.

MR. WEST: I sort of like the idea of the solicitor being elected. I think there's some justification for that.

MR. SINKLER: Shouldn't the Attorney General have a little more control of the solicitors or do you think that's a matter that should be handled by statute?

MR. WORKMAN: If we remove likewise the coroner, we can take a giant step forward towards a medical examiner system which is badly needed. We've got not too good a record on murder in South Carolina as it is now, but I'm convinced that if medical examiners got hold of all the dead bodies in South Carolina the rate of murders and homicide, justifiable or not, would increase. We have blind coroners that can't even view the body.

MR. STOUDEMIRE: Along with the idea that Mr. Riley suggested some time ago, I've come up with a rough draft of an introduction and so on.

MR. WORKMAN: Before we leave the courts, can I get one more thing in because I was pledged to do it? _____ brought this point up after talking, I think, with _____ and I don't know that either of them would care to make it as a recommendation over their name, but---no reason that they shouldn't, but the thought was that if, in the allocation of circuit judges that the circuits of the State be grouped into districts or whatever term we choose to call it, if any, of say five, six or eight counties within a district, that it would limit the physical area that a judge had to circulate in and enhance the attractiveness of that job to bring people in who would be less inclined---for example, Clarence Singletary, who has to spend so much of the time in Oconee and Pickens and York where you can't get back home and these judges, a lot of them, spend a considerable proportion of their year away from home, whereas if they were operating the second Congressional district, they could be home---

MR. RILEY: Couldn't the Court, Supreme Court, handle that, Bill, under the unified system?

MR. MCLENDON: There's one thing that worries me about that. The judges get a first class education after they leave the General Assembly and sit on the bench traveling over this State and being exposed to the lawyers in the mountains and the lawyers down in Jasper and the lawyers on the coast and if you limit a lawyer to a certain area, you may land down in some agricultural area with no education in the industrial area of this State and I've talked to several of them about it and one or two of them, haven't talked to many, one or two of them had told me that that was a tremendous advantage to a young judge particularly. The fact that he had to go over the State and meet everybody and see the problems Statewide instead of---

MR. WEST: Exposed to the entire Bar which is a stimulus.

MR. WORKMAN: I don't make any recommendation, but I was obliged to bring it up.

MR. SMOAK: It's a lot easier to travel today than it ever has been before. The accommodations are better and they are getting better all the time.

MR. WEST: I think the real strength of our judicial system has been that constant movement. In other words, you've got sixteen judges who are circulating. I would hate to practice law just knowing that one or two judges were going to try all my cases.

MR. STOUDEMIRE: What was the decision on solicitors, or have we?

MR. WEST: I think if we could get a fairly general statement that the General Assembly shall provide by law for proper officials to enforce and prosecute and administer the courts of our State, that would do it, I believe. //

MR. WORKMAN: You would leave the reference to the word "solicitor" out of the Constitution altogether.

MR. WEST: I think so and then let the General Assembly provide. I personally would be in favor of the continued election of solicitor, but I don't really think that it is necessary in the Constitution.

MR. STOUDEMIRE: In my comments I would say that this statement is to take care of solicitor, sheriff, coroner. //

MR. SINKLER: I would like to see a little something in the Attorney General giving him some supervisory power over any solicitors.

MR. WEST: I think you've got a point there. In the provision on Attorney General, say that he shall have the administrative powers that the Chief Justice---the same sort of thing the Chief Justice has over the judges, he has over the solicitors. Now, he exercises a certain amount of supervision. //

MR. STOUDEMIRE: Gentlemen, if you pick up with a general statement as you have done, then this leaves your General Assembly perfectly free to pass any type of law they want as to the Attorney General.

MR. SINKLER: It is so easy to put it in here.

MR. SMOAK: And you've got it so far as your judges are concerned. I think it's appropriate to put it in.

MR. STOUDEMIRE: All right. There shall be an Attorney General for the State. He shall perform such duties as may be prescribed by law. He shall be elected. //

MR. WEST: He shall have such duties as prescribed by law including the administrative control over prosecuting officers of the State court system. //

MR. SINKLER: That's right.

MR. SMOAK: There is one thought in regard to the fact that we might take some of these people out of the Constitution as elected officials. The tendency seems to me towards more elected officials and not less and this is a good argument to give people when they come to you. For instance, you start reorganizing your county government, you go

from three supervisors to a council of maybe seven and before you finish, you will probably have a formula where every voter will be, under the new system, will vote for a majority of that council which is a lot more authority than he ever had before and is an awfully good argument...

MR. WALSH: They are electing the people who control the basic policy a great deal more and going away from electing purely administrative people.

MR. WEST: That, to me, is the dividing line. You ought to elect the policy and appoint the administrator. Let the elected officials appoint the clerical and administrative people and be responsible for their performance.

MR. RILEY: Mr. Chairman, I would feel that it would be inadvisable to change anything about the Attorney General Section of the Constitution in fear that it might be taken to restrict his authority. I guess we could say, "including, but not limited to" but when you start deleting any--what he can do, we are really just getting into what I think the General Assembly really ought to do and I think they could be advised that we think that need is in there in a footnote or something of that nature, but I don't think that should be in the Constitution.

MR. WORKMAN: In reference to his administrative supervision over---

MR. RILEY: Over solicitors.

MR. SINKLER: I sort of disagree there because I think that the Attorney General really is the guy that all of the people can look to for the enforcement of his rights. If he hasn't got some power over somebody---he has the right to prosecute any case and I think he ought to have a right to control anybody who does prosecute.

MR. WORKMAN: I agree with you fully on that because if we are going to allow the Supreme Court to exercise a degree of monitoring role over judges to insure their effective compliance and discharge of their duties then we ought to have some higher authority than the local solicitor to insure that he does his job because there is more opportunity for hanky-panky on the part of solicitors and in some circuits that I'm familiar with, it's been going on for years. One of the things that I was hopeful of making the solicitor a full time job, barring from the practice of other law and this would become statutory if they ever decided to do it. And I agree that somebody in authority should be the one step up over the solicitor, whether it is at the county level or the circuit level, so that he can be required to measure up and toe the mark. ||

MR. McLENDON: Isn't the same true with the sheriff? The Governor has that oversight of the sheriff. Why shouldn't the Attorney General have an oversight over the solicitor?

MR. WEST: Yes, I think the Attorney General should have. The circuit judge does not have the right to tell the solicitor to prosecute now. There is no control over the solicitor.

MR. WALSH: It is completely in his hands.

MR. WEST: He is judge, juror, so---Dick, are you willing---

MR. RILEY: I think this is a good idea, but I was just wondering---

MR. SINKLER: I wasn't happy with the exact language, but I was just---

MR. STOUDEMIRE: It's statutory, gentlemen. You're taking out the solicitor from the Constitution, can't claim he be a constitutional officer and you're back to where the General Assembly can specify by law that they want the Attorney General to boss him.

MR. SINKLER: I don't agree with that point. I think this is a---

MR. WORKMAN: Safeguard.

MR. WALSH: You have got a point, but we could leave everything up to the General Assembly.

MR. WORKMAN: I think it is an area in which a segment of the public lacks protection. They are subject to arbitrary action by the solicitor which can be not only arbitrary, but unfair and I think there ought to be some safeguard in there.

MR. WEST: The solicitor is one of the most powerful men.

MR. STOUDEMIRE: Or the reverse.

MR. WORKMAN: I would have no objection if this thing were included in the purview of the Supreme Court itself.

MR. SINKLER: No, I would. I think the Attorney General is really, basically, supposed to have something to do with---supposed to have investigative processes and all those sort of things. I think he's the logical man to have this power and I think it's a safeguard that the people are entitled to, therefore when you're dealing with safeguards I think you ought to---I beg to disagree with Bob on that.

MR. WEST: I don't believe the court should get into---I think there would be possibly a conflict---

MR. WALSH: I would agree with you there.

MR. STOUDEMIRE: John, there is one other question on the courts. I'm asking now for guidance. Did we discuss the question was raised by Bill, unanimous decisions by the jury? My memory sort of is that we brought it up and we said it should take all.

MR. WEST: It still should be unanimous.

MR. RILEY: Didn't you mention four or five things that we were going to refer to various---the Bar Association and the trial attorneys and the claimants' attorneys and several others and I thought it was one of them and we were going to ask for their comments. // Gmet

MR. WEST: I think you're right there. In other words, we'll tentatively keep it as it is, but tell them that we would like their opinion on whether it should be retained or whether we should---

MR. WORKMAN: I would suggest---George Campson used to make that fight in the House, that you make it by a majority or a percentage within a jury of a finding, rather than unanimous and his point was that in many instances because justice is served better by a majority than by unanimity because of one guy who can be either persuaded or bought in jury can obstruct the will of eleven others.

MR. SMOAK: And it happens in every term of court.

MR. WEST: Let's go to working paper 11 now.

MR. STOUDEMIRE: Gentlemen, you note this brings us to Article VII on counties and Article VIII on municipal and police regulations and Dr. Bain in his working paper brought them somewhat together yet leaving the necessary distinction. Actually, I don't know where is quite the right place to begin. You might want to look on page 8 where he has summarized what he thinks some of the basic issues that pertain to local government and I don't know whether you want to start at this point or whether we want to just hit right into county government and proceed. He makes the point that some of the basic questions are to what extent should the Constitution allocate powers and responsibilities to the units of local government? To what extent should the Constitution fix the types? To what extent should the Constitution restrict the General Assembly? To what extent should the Constitution restrict the procedure to be followed and things of that nature. What Dr. Bain did---he did it in three parts. Part 2 concerns the content and then part 3 concerns a proposed redrafting content which would be here as a guide line which we could

agree or disagree or whatever we want to do.

MR. WORKMAN: Would it be in order, Bob, for us to direct our attention initially to the five separate approaches to County Government and then if we can agree on an approach, then we can start getting into details of how that would be.

MR. STOUDEMIRE: That's on page 5.

MR. SINKLER: Couldn't we open this by asking Professor Bain to summarize briefly and give us his personal judgement in the matter?

MR. WEST: Yes, Doctor, would you be in a position just to give us a brief summary of---if you have recommendations, what you think we ought to do.

DR. BAIN: I think, Mr. Chairman, that a fundamental issue is to what extent are the details of local government to be spelled out in the Constitution in the form of protections or to what extent should there be the general provisions that would indicate what the Legislature is to do that is the same time leaving a broad range of discretion to the Legislature, controlling only those things where you do not want the Legislature to exercise discretion and then to indicate whether this shall be done in this connection, whether this shall be done by general law provisions or whether there shall be the practice of passing a special law for each county, for each city, for each unit, on---. Now, prior to that, I think a very fundamental issue that is involved is a policy decision as to what is to be the relationship fo the units of local government to the State in the fulfillment of its obligation to the people of the State. We have for a long time proceeded on the assumption that we have a three-layer---three levels of government, three layers, and the idea that cities and counties and units of local government are primarily autonomous units. Then, above that is the State government and then above that is the Federal Government. Well, I think that, certainly the recent studies and research, every indication that local government is not longer an autonomous thing, that each unit is to go its own way, but it's a cooperative matter between the State and the local units. So this antecedes the question as to how far, then, should the Legislature spell out details and especially how far should it go in leaving as much discretion to the Legislature and whether there shall be a home rule provision. Now, insofar as the approach is concerned, taking the position in part 3 of spelling out in the Constitution primarily restrictions upon the Legislature that are felt should be there, so rather than trying to go into tremendous detail in the Constitution of things that are felt that would be better in general letter. Now, also, there is one very, in the part 3, one fundamental thing that the Committee should be aware of that was behind the drafting and that was the assumption that there are many instances or wherever possible there should be general law provisions rather than special law provisions and in some instances

that specifically requires general law provisions and goes on to include a provision that prohibits the enactment of special law provisions. For example, just to illustrate this point, Mr. Chairman, there is the requirement that the Legislature shall establish by general law classes of counties and classes of cities. Then, by general law, spell out the provisions of the structure, the powers, the organization for each of these classes and it goes on in each case to provide that no special law for this purpose shall be enacted. Now, I wanted to make clear what was the basic assumption behind the drafting whether the Committee agrees with that or not. I would think, sir---one other point---that it might be, before going to part 3, it might be well to look at the comment at the end, in part 2, my comment at the end of the various sections---

MR. WEST: The only trouble is---I'm afraid that if we get lost in the mass of what we have now---I don't want to disagree with you, but I think, our minds are fresh now---why don't we start with your recommendations? Do you think that would do violence to---

MR. STOUDEMIRE: There is a very definite connection.

MR. WEST: Between the comments. O.K.

MR. STOUDEMIRE: You see, his first one is on county boundaries, so then if you turn back to Article VII. In other words, he is substituting ---

DR. BAIN: I don't know whether you would want to go through it point by point or item by item.

MR. WEST: That's what I'm getting at. I believe that if we could just get your proposal as the initial impression that we want, that would be a good way to start, rather than getting led off---

MR. WALSH: I rather think that we are all fairly familiar with what we have now. Can we discuss what would be a good form of county government because this whole system of county government and system of municipal government are going to have to be completely restructured because the fact of the matter is that the framers of the 1895 Constitution did not want, they did not provide for county government. County was simply an extension of the State for the purpose of carrying out such functions, dividing up that administration in such a way that no one person could ever do much about the whole big problem.

MISS LEVERETTE: But, Emmet, don't you think that that is---this is what we will decide---but what type of government is going to be a matter left up to the General Assembly if we do adopt one of these general provisions.

MR. WALSH: No, I think the whole part of this thing is going to be the broad laying out of guide lines.

MR. WEST: Let's start on page 25. Let's begin on page 25 and go right down and we will pick them to pieces.

MR. WORKMAN: Chester, before you get into it, what is the general philosophy which is back of part 3? Is it the fact that the Constitution shall establish certain restrictions allowing the General Assembly by general law to provide the details of government within those various levels.

DR. BAIN: That's right. Plus constitutional provisions that would give home rule provisions under certain conditions.

MR. RILEY: Chester, I don't want to hold it up, but on page 2 where you mentioned important issues---the most important of these issues is the question of what role local government is to play in the governmental affairs of South Carolina. I wonder if you would explain what you mean by that. Is that a broad issue that we should determine first?

DR. BAIN: I think it is an issue, sir, that will sharpen up as I present the--in very general terms, it goes back to what I said a moment ago. No longer do we have a situation in which there is an autonomous level of local government, then the State government and each one goes its own way. There's got to be interaction and dependence upon---working between the two units to provide the services and functions that are needed by the people. The first recommendation or proposal would be that where we now have two separate Articles, VII and VIII, that these be combined and that the title be, Local Government.

MR. WALSH: That to include both county and municipal government?

MR. WEST: Everything below the State level.

DR. BAIN: The next Section, really, the next two Sections, are based upon an assumption that the Committee would agree to the deletion of the first six sections of Article VII. These all relate to the provision of formation of new towns and it was felt that the time has come to remove from the Constitution any encouragement along that line.

MR. SINKLER: I have a little bit of variance on that. I think we ought to provide that there shall not be more than forty-six counties, but I think there ought to be situations where consolidations should be encouraged and not necessarily one county going into another, but perhaps one part of a county going into one county and another part going into another county.

MR. SMOAK: This could well come about.

DR. BAIN: Mr. Chairman, I believe that is covered.

MR. WEST: Let's continue on, then.

DR. BAIN: In view of that fact, though, it was felt that the Constitution (at the top of page 26) ought to contain a provision and the language there: "County, city and town governments existing at the effective date of this Constitution shall continue until changed in a manner provided by law" which would be by Constitution or by statutory provision.

MR. STOUDEMIRE: I raise only one question here. Do we need to make it broader? Other political subdivisions? /

MR. SINKLER: Probably do. I think we better provide.

MR. STOUDEMIRE: And I believe the term we've been using is "sub-divisions".

MR. WEST: "County, city and other political sub-divisions". //

MR. STOUDEMIRE: Better leave town in, gentlemen. It's a State law, you know, under 5,000 and so on. Somebody might get into an argument.

DR. BAIN: The next section on the same page, County Boundaries. It was thought, again in line with the proposal, delete the first six sections, that a provision as suggested here should be included. "Until changed by law, the boundaries of the several counties shall remain as established at the effective date of this Constitution." And then the next paragraph is to cover the possibilities that a controversy might arise over a boundary. "Whenever a controversy shall arise over the correct boundary line between two or more counties, the General Assembly shall provide by law for the settlement of such controversy". That replaces a rather lengthy provision. /

MR. WORKMAN: So far we're just condensing---

MR. WALSH: Doctor, let me ask you just one question. Where do you provide for the consolidation of counties? I think that is one of the tremendous---

MR. SINKLER: What about my idea that there shall not be more than forty-six counties?

DR. BAIN: There is a provision that I believe will take care of this in a subsequent section when we get to the details.

MR. SMOAK: Mr. Chairman, just from a legislative standpoint, what about that provision now? About the General Assembly providing by law for the settlement of controversy. What kind of a row would you get started?

MR. McLENDON: We just have done that with Oconee and---

MR. SMOAK: No, that's a different situation. That was---

MR. WEST: That was an annexation thing. Edgefield and Aiken---

MR. SMOAK: Had the biggest kind of row in the world. It arose legally, but Aiken County lost considerable territory to Edgefield County. Of course, it was provided for and it was handled very smoothly under the present law although it was a little costly. But suppose we hadn't had that law and we tried to settle that squabble in the General Assembly.

MR. RILEY: No, the General Assembly will provide the law.

MR. STOUDEMIRE: He's saying exactly what we've got.

MR. SINKLER: We don't want to say, "shall provide" on the theory that that might---

MR. WORKMAN: The General Assembly doesn't make the decision for settlement, it provides the law which does.

MR. STOUDEMIRE: You would assume they would just re-enact the existing law for the time being.

MR. SINKLER: Why make them re-enact anything? It's perfectly good.

MR. WALSH: You have a statement here that the Legislature could impose as rigid a set of requirements as it might desire for the creation of a new county. It is my thought and idea that really these senatorial districts, from a practical standpoint, are kinda' congenial to each other and create a basis for a new county system that would be far more efficient than what we have now.

MR. WORKMAN: Over on page 28 you get into that.

MR. WALSH: You think that sufficiently covers them.

MR. WEST: All right, let's push on.

DR. BAIN: As of now, now changes on page 26. On page 27, it calls for a classification of counties. "The General Assembly shall establish by law classes of counties, which shall not exceed five in number, based upon population, as determined by an official

census and other relevant criteria. No more than one classification shall be in effect at any one time, but the classification may be changed at any time." Now, the philosophy here is that certainly if you classified counties into as many as five classes or five groups, this ought to cover all types of conditions. You are not forced to establish five. You may not have more than five, but this would be a general law provision and it would require them ----- population and other relevant criteria that the Legislature wants to take into account. Density, population distribution, things of this type. It could establish these by law and then the idea was that if conditions change, and a new system of classification ought to be imposed, this would be possible.

MR. SINKLER: Let's think of some of the consequences of this now. And I'm probably on the little county's side when I make this statement. Suppose the General Assembly decides to have five classes of counties and they said, well, as far as school aid, one class would be on one basis, another on another basis, right on down the line. Then, aren't we also creating, class five county goes to borrow money and the bank's going to say, you're just nothing but a class five county, why should I lend you money. It will probably affect the credit of these small counties.

MR. WALSH: I wonder if five isn't too much. I believe you're going to have to have some classification if you are going to meet the urban problems of this State. You've got---you can, about five or six counties and they've got problems about as different as day and night.

MR. WORKMAN: Unless we classify, we're going to get up to our ears in special legislation. By classifying, we can just say general laws will affect. The thing that concerns me is the hassle that we had after World War II with respect to Sunday entertainment and sports. Then, we started getting a mess of special general classifications. In the case of Myrtle Beach, an exception was made there for towns within this category which are seashore resorts. Then there were others which made provision for towns within a given location of a defense camp---something of that sort. In addition to the population there were categories affecting the resort nature, the adjunct are of military establishment so this would still be permitted under what you've got. The "other criteria", wouldn't it?

MR. RILEY: "Other criteria" wouldn't be usable until you eliminated the use of the population criteria.

✓ MR. STOUDEMIRE: May I ask a question? Let's assume tht we would have three classes. Then, would the General Assembly be able to provide optional forms within a class, that one could have a manager, one could have a board of directors and so on?

DR. BAIN: That's right. Yes, they could. We will get to part of this on page 29 when it provides for the governmental structure.

MR. RILEY: As I understand it, Doctor, all these acts that we have now, cities and towns and population and so and so---all that would go out. How would you determine what five classifications are good. Say, we're using now twenty classifications and we passed a constitutional change of this sort. How would that affect those twenty statutes? Have to re-enact all twenty of them or would---how would five be arrived at---that would be up to the General Assembly?

DR. BAIN: Yes, sir. I am sure it would take a rather extensive amount of study to come up as to what types of counties, what criteria or things that would determine what types of counties have similar problems and therefore it could be treated on a uniform basis.

MR. SMOAK: For instance, a county that has home rule, that certainly would have everything to do with what classification a county would fall into.

DR. BAIN: Except there is a provision here that counties above a certain size and with certain criteria, may pull out from all of this and establish home rule. May.

MR. SMOAK: Now, one other thing, Huger, the question you raised a minute ago about classification. What kind of a classification do you envision here? A descriptive classification? You're not going to number them one, two, three, four and five because if you do that then you will, definitely---I think Huger's criticism is good. We certainly don't want to do anything here that's going to hurt them.

MR. RILEY: I don't see that that's going to affect any bonds. They know if a town is not but 2500 people. The fact that it is classified 5 instead of 1, I don't see.

MR. WALSH: Other states have the same sort of classification.

MR. WORKMAN: Well, the classification system is already adopted by the Federal Government with respect to post offices.

MR. SMOAK: But we don't have to follow it.

MR. WORKMAN: No, but the classification system, I think, is a reasonable differentiation so that within, say, up to 5,000 certain general laws would apply between five and ten. Others would apply from twenty to fifty thousand and above 100,000. This is, I think, what you've got in mind. The general law would say these alternative

governments may prevail within this class 5 if that be those over 100,000, you see. The city manager type or they can have mayor-council or whatever.

MR. McLENDON: That's part of the present law.

MR. STOUDEMIRE: If you apply this statement to our current counties, I would see a possibility of something like this. A class for McCormick up through, shall we say, twenty-two or twenty-five thousand and a class of twenty-five through fifty-two and then you go to Orangeburg which is about sixty-three or four and probably would be higher than that by the time this would get through, then would leave you a third class for all over sixty, let's say.

MR. WALSH: I think if you look at it, though, you're going to find that five is just too many.

MR. STOUDEMIRE: It's not mandatory.

DR. BAIN: Well, looking ahead the idea was, you would not have to have five, if you say two or three and you needed another class, then you would have to come back and amend the Constitution.

MR. WEST: Doctor, this other relevant criteria causes me a little concern. Assume that Charleston, Greenville and Columbia reach an almost equal population, could you justify under this "other relevant criteria" putting each of the three of them in a different classification?

DR. BAIN: Yes, if you use up three of your five and that would leave two for the others.

MR. SINKLER: Can't you see Columbia, Greenville and Charleston grabbing those three and making all the rest of them go into some other classification. I can't follow the necessity for this provision at all. I really can't

MR. WEST: Well, I'd like the Doctor to comment on it. Is that because you've got to have certain categories of law, based on the population or the size---is that---suppose you comment on---

DR. BAIN: Sir, in answering that, may I suggest that we look at page 29? Page 29 deals with Counties: Governmental Structure and the proposed language there: "The General Assembly shall provide by general law for the structure and organization of the governments of the counties in each of the several classes established. Such provisions shall apply without exception to all counties in the same class." On the next page which deals with the powers of counties: "The General Assembly shall provide by general law the

powers, duties, and functions to be exercised in each of the several classes of counties. No local laws shall be enacted for these purposes, and no county shall be exempted from any general law applicable to counties in its class, except as otherwise specifically provided in this Constitution." Now, the idea is that the Constitution require the General Assembly to establish not more than five classes of counties, to enact general law provisions on the governmental structure, powers, duties and functions of the units in each of these classes.

MR. SMOAK: Basically, what you are doing is making these governments the same. If you take a look at the statutes of the various counties, the way they're organized now, type of government they choose to enact for themselves, there's great variance. The numbers of people on their council, how they are elected, from what district and so on. Is there any advantage, really, in compelling these laws to be the same?

MR. WORKMAN: I don't think, Joe, that he's really getting at any uniformity in terms of the net result of the government in the particular areas, but it says, "counties with population in excess of 100,000 may adopt forms of government to include the following" in which we would say, mayor-council type and if you wanted it as in Charleston---I don't know whether they've still got twenty-four members of council or not. They used to have a little legislature down there. Charleston could have twenty-four members of council if they wanted it. Columbia could have five. Greenville could have eight.

MR. SMOAK: But what's the necessity for that, Bill? You can do it anyway. I'm just inquiring.

MR. STOUDEMIRE: I haven't discussed this with Professor Bain. As you now know, we have nothing in our Constitution on counties as to form of organization. Therefore, I think it is generally ruled that the General Assembly is essentially free to do that which it sees fit. Now, as I look at all these things, I see a possibility coming up here---I don't know whether this is what you're getting at or not---you can have a positive command that the General Assembly shall provide by law, or by general law, either way, for the structure and organization of county governments. If you say, "general law", then you have to classify, I think. If you don't want to say "general law" then you have to provide for structure and organization and things which could vary. Now, if you go back over to his other statement on Section 20. "The General Assembly shall provide by general law the powers and duties---" again, the same parallel here, you see. As I see it, you have a possibility of saying "classes" and then you have the other possibility of giving the General Assembly a mandate to do something.

MR. RILEY: Mr. Chairman, I think this is a real, refreshing start. I would suggest---put something out for debate---that the proviso on page 27 pertaining to classes, strike the provision "which shall not exceed five in number" and strike the final sentence which says, "No more than one classification shall be in effect at any one time"---that would be all right. Just leave that in. What I would say, generally, is not limit the numbers of classifications, basically, then when you get over here and you're discussing the structure or organization of government, there restrict the classifications to five. Doctor, what would be your thinking about that? I just think as a practical matter, restricting the classifications to five on all matters as far as all the counties---is just a practical impossibility where we are just getting into this idea of county government, I think it definitely should be restricted.

MR. STOUDEMIRE: You're thinking about the forms of county government, now? I mean a restriction to five options, shall we say, as to how you'll be governed.

MR. RILEY: Five classifications.

MISS LEVERETTE: You would have less flexibility there than you would with this because you're restricting the forms, whereas, under what he has here, you restrict the classification, but not necessarily the alternative.

MR. WALSH: You could have three forms.

MR. WEST: In other words, in a county with a population of 25,000 you can have a county-council or you could have a county-manager or three council or five council. You don't have to have a county council. In other words, you can give any number of alternate provisions. Is that the idea?

DR. BAIN: As long as this is done by general law and not passing a special law for each.

MR. SMOAK: You are going to have to pass a law, though. The details of this thing are tremendous.

MISS LEVERETTE: Let me throw out one thing, though, in connection with what Marion is saying here. Don't you think in an argument for this classification system that with the way things are now and continuing with this urbanization and various requirements such as reapportionment, of setting up county government that if we don't do some classification, you are going to be run crazy by people coming up there wanting different---you have such a---

MR. WEST: You're right there.

MR. STOUDEMIRE: Let me throw this out because I think it's what we've got to decide. Do we want to make, let's say as a hypothetical situation, Edgefield and Fairfield and Calhoun sort of be in a single population class for government or do we want to leave, say, Fairfield under the Constitution if she can get the legislation through the General Assembly regardless of how it may be worded, free to have whatever type of government and powers and anything else that might be given to Fairfield in a local act.

MR. SINKLER: Let me ask one other question in connection with this classification. It's all very well to classify as far as form of government which I don't think is too terribly significant although I can foresee the innumerable questions it's going to pose in the General Assembly, but this business of classifying when you get to general laws, you've got to be very careful. They've got to be certain types of law that have got to be general and applicable statewide nature and so you've got to be awfully careful with this language of a general law applying to any particular class. You might have a general law making it a crime to do something in this class of counties which might be valid under this Constitution unless the due process section---

MR. WORKMAN: It shouldn't do that under the terms of the Charleston County act because the court held in that---police powers is the one thing that they would not let county council---

MR. SINKLER: They didn't define police powers. Of course, every time you put in a sewer you exercise police power. That's the thought I had in mind, Bill, as to where we've got to look out for this thing. I can't, frankly, see the merit of limiting the classes. I'm on your side on that thing. I don't know whether there is a necessity for classification. If there is, I certainly don't think anybody's wise enough here to pick out 5, 10 or 25, frankly.

MR. WALSH: 70% of all the educational funds goes from the State to these counties. The efficient operation of an educational system in McCormick or Fairfield county affects the people in Spartanburg because it affects how much taxes we're going to have to pay and it affects the people in Greenville County. All the people in the State of South Carolina have a direct and vital interest in seeing that there is some logical and generally broad outline of government followed in the counties and that that government be effective. It may not be the most satisfactory way, but it is the least unsatisfactory way of doing it.

MR. WEST: Well, Emmet, let's look at the alternative. Today, we have forty-six separate classifications of county government, one for each county. All right, now, we agree that that is not effective,

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that is not efficient. To me, there is only one way to promote some efficiency, to reduce this forty-six to some workable number and have uniform provisions. The most shocking experience that I ever had in county government and it was not long after I started practicing law. This group from a neighboring county came to see me. They had run for the job of County Board of Commissioners which was the governing body. The Senator who was elected was on the opposite political faction and they were sort of at dagger's points and the first thing the Senator did was to pass a local act that eliminated the County Board of Commissioners and called it the County Board of Directors with exactly the same provisions except the change in name. These fellows had been elected for four year terms. Well, I thought they had a wonderful case. I looked into it and they didn't have a case. They were out. The Legislature had eliminated them. There was no protection whatsoever. And, of course, that fixed the government of that county under the local legislative delegation.

MR. WALSH: One man did it. Whatever that one man wanted, that's what he got.

MR. WEST: Now, I think that whatever we do in county government, we've got to remove, we've got to make it more responsible to a greater number of people and to do that---one way, certainly, is to get some classification and have general laws and I'd like to know---

MR. SINKLER: I'll go with you on the general laws.

MR. WEST: All right, but how are you going to prevent a legislative change in local government except by having large segments of the local governments grouped together with people who would say---all right, let's take for example in the municipalities, breaking over into that a moment. You've got the City of Greenville, say, they're on good terms with their Mayor and they want to pay him \$50,000 a year and the Legislative Delegation goes along. Maybe that's far too much. The county of Charleston, on the other hand, they want to cut him. Now, if you've got categories or classes where general laws would be required---it eliminates that personal type legislation.

MISS LEVERETTE: Let me say one thing in connection with what Huger says here now. If you eliminate your class, what you are doing, it seems to me, you are leaving it open for a multiplicity of general laws.

MR. SINKLER: What I had in mind---I agree with what Emmet said. South Carolina is a tight, little cohesive State and what you do in Spartanburg affects me in Charleston. What I do in Charleston can adversely affect you and I don't think I ought to be allowed to do it. My idea is that we have a single---the General Assembly shall---the County shall have a governing board or whatever you want to say of not more than so many, nor less than so many. Shall have terms

fixed by law, by general law---something to that effect. Leave the control in the local---in other words, re-establish local government in South Carolina because I can't see any point in having a five section classification. I want to leave it all the way across the board.

MR. WEST: In other words, you want to have a general local government section which says that there shall be local government, home rule type---

MR. SINKLER: That's right. In other words, the General Assembly could come along and say that they can't operate in this area, but they'd have to ---the whole way across the State.

MISS LEVERETTE: What you want to do is to put it in in the Constitution rather than leaving it to the General Assembly.

MR. SINKLER: I certainly do and I want to provide that any county and city could consolidate if they wanted to do that and then get home rule. I want to give them home rule or come under the general law.

MR. WORKMAN: Huger, if by blanketing all municipalities or all counties into your one category, you will necessarily require that whatever general laws are enacted would be equally applicable to McCormick as to Charleston, Greenville and Richland I don't think you can do that.

MR. STOUDEMIRE: I think you gentlemen are overlooking a very significant point. I believe a population class law is a general law---let's go to municipalities to illustrate my point. We have a general law which says that any municipality between 9 and 12, I believe, may adopt, under certain regulations, the manager form of government. This is a general law therefore applying only to Aiken and the City of Cayce. All right, we have another general law that municipalities over 20,000 and I think our courts have said, so now I believe that based the way I understand the South Carolina Supreme Court, if you go back and you say these things can be done by general law, then---I think you have to acknowledge then that there can be population devices set up and will still be called the general law. Am I not right?

MR. RILEY: I think you're right.

MR. STOUDEMIRE: We certainly have---I know your Aiken government---we haven't had a test case on that as to whether, but we do have things on the books that all towns between X and Y, except Union and so on, you see. And these have not been challenged as not being---

MR. SINKLER: Everybody covered by general law or you put yourself in home rule.

MR. WEST: What do the experts say to that?

MR. RILEY: I am afraid you could have a county where you had a group in control---if there was no general law and didn't set up any guide line, might could get pretty far afield, couldn't it or couldn't it. Is the day gone where you could have complete control by just a couple in one county or something like that?

MR. SINKLER: Well, now, I think there have got to be limitations on home rule. I don't think home rule can enact penal statutes or anything like that. I think you've got to clearly delineate the powers of home rule counties or consolidated counties.

MR. WALSH; Home rule counties can also be made amenable to certain general laws applicable to all home rule counties.

MR. RILEY: Now, we're back around to where we were.

MR. WALSH: Most states, they say if you want home rule then you can have it, but then there are certain basic uniform applications that have to apply. Otherwise, you'd have---

MR. RILEY: Then you take them out of the classification---

MR. SINKLER: Oh, yes. I wouldn't give them power, for instance, not to levy taxes. I'm really a little nervous about these county governments, about how they are going to come into being and operate because we've had an awful skillful group, even though they were political running these counties in the legislature and I don't think the Constitution is the place to put it, but I certainly hope there are going to be general laws which will provide, in substance, that no school district can get State aid until they have established that they have got a balanced budget.

MR. RILEY: Huger, according to your suggestion, I would prefer the General Assembly to have the alternative to say as they set out each of these different classifications, if we had a five classification system, except in the event counties within this classification vote in home rule, the following shall be applicable or something like that. In other words, you could put that, within the classification system, itself, and have the General Assembly do it. Where if they voted in home rule, they could come without these provisions themselves. As I understand it, Doctor, you could have that much latitude within the classifications, couldn't you?

DR. BAIN: That's right.

MISS LEVERETTE: Well, you've provided that, haven't you?

MR. WORKMAN: Let me get this down to what I think is a real basic consideration. We are witnessing now, since reapportionment, a necessary abandonment of the former system of county government. Insofar as it was crystallized around the one senator, one delegation per county. That is now longer, with certain few exceptions, that no longer exists as it has done. One thing that we ought to concern ourselves with, do we want to guarantee in the Constitution to the residents of every county in South Carolina an opportunity for them to establish a form of local, self-government other than that exercised through the legislative delegation for the administration of affairs within that county. My own idea is, say, yes.

MR. SINKLER: All right. You're going right back to the Constitution of 1868 which had a single uniform class.

MR. WALSH: Yes, they just had one class.

MR. WORKMAN: Now, we can provide alternative types of government which accomplish this local, self-government then, I would say, within--the alternatives are broad enough to include small counties and large countties, all right. The classifications are going to become more difficult when we get into the municipalities. But so far as counties are concerned, my primary consideration is guaranteeing in the Constitution the right of county residents to establish a form of local, self-government apart from legislative control.

MR. SINKLER: All right. That's what I said, go back to the '68 Constitution, you pick up the language---I think their's says three county commissioners, not less than three nor more than seven or something like---

MR. STOUDEMIRE: It says three. You see, I don't think you can say in a Constitution that Spartanburg County can be properly governed by seven if your political situation needs eleven.

MR. WORKMAN: I don't think you can do it and I don't think you're wise to do it. Charleston has got geographic divisions which mean that you've got to have something for the City of Charleston, West of the Ashley, East of the Cooper, North Area. Those same provisions don't apply in Spartanburg.

MR. SINKLER: I don't think there's that need for geographical representation.

MR. WALSH: Do you feel, Huger, that really now the "at large" thing is a better way?

MR. SINKLER: Definitely. Definitely. I really think you can do it at large and I see no reason to do anything more than not less than three nor more than seven. And I would provide for this--- I think your so-called home rule really shouldn't apply unless you've

got a real merger of city, county and all special purpose districts except school districts, such as the pattern that Bob Stoudemire did such a good job in presenting to us in Charleston County which we are trying to, gropingly, implement. I think counties ought to be counties under a single general law unless you've got this complete merger. Then, I think they have got to be subject to certain classes of statewide law.

MR. WORKMAN: Well, are we agreed we want to provide the guarantee for local self government.

MR. WALSH: I think if we could agree on these principles, we might be able to work up the details. Each county ought to be guaranteed the opportunity for control of their own government.

MR. WEST: That the local citizen should have a right to determine what form or some form of county government as an alternate to the present legislative.

MR. WALSH: Separated from the General Assembly.

MR. RILEY: Do you want it required or an alternative?

MR. SINKLER: I want it required and I suggest we use '68 and I'd put elect them at large, too.

MR. WORKMAN: Let's get back to what Dr. Bain---

MR. SMOAK: I'm not sure on that.

MR. WALSH: I don't know if that ought to go in the Constitution. I can certainly see that in some local situations, you might have to grow up.

MISS LEVERETTE: Aren't we getting the cart before the horse here a little bit because it seems to me like we have got to make a decision about which one of these methods we are going to use.

MR. SINKLER: I was going to make another suggestion. I was going to make a suggestion that we bought number 1 and number 2. I would say that all county government be controlled by general law, a single general law except where there has been a complete merger of all governments, special purpose districts, cities and towns into what I call home rule. I'm not talking about home rule being something that the people of Edgefield County, for instance, given themselves home rule and then they put a 25 per hour speed limit here or something like that.

MR. WORKMAN: You're talking about one single administration.

MR. SINKLER: That's right. Then I'm talking about where there has been a complete merger of all local governments throughout a county except schools, that shall be separate, that that category be put in, and that category -only, be put into the so-called home rule class, because we're talking about local government now. We're not talking about the counties. We're talking about local government. In other words, all I really would do would be to simply say that the governing bodies of the several counties would be elected rather than appointed as in half of the instances now, or more than half.

MR. WORKMAN: Let's get Dr. Bain back in here. What do you think about that, Doctor? We agreed on the principle of local self-government, now, and we're trying to get the means whereby it can be guaranteed to the people with some degree of flexibility as to what course they want.

DR. BAIN: I think local home rule across the board is a fine thing, but you are going to run into all kinds of problems.

MR. STOUDEMIRE: Let me review for you what is coming up in this thing, gentlemen. First, I think we have to decide, do you want just to mandate the General Assembly that it must provide for county government or do you want to do it by statute? Now, as Dr. Bain has outlined, later he comes to showing you how you can have a home rule county. Later, he shows, as we get into the question of how you have municipal government, how you have municipal home rule government. Then, later still, he comes into the question of how you have metropolitan and regional government, either by law or by a home rule device, you see. If you keep going you finally get the whole package.

MR. WORKMAN: Maybe we ought to keep going.

MR. STOUDEMIRE: And when you get through, your package still is not going to be very long, but to me the pertinent question at the moment is, do you devise a county government simply by that the General Assembly under the general law shall provide for the organization, powers and duties and responsibilities of the counties.

MR. WALSH: They can do that now.

MR. STOUDEMIRE: Yes, but this would make it mandatory.

MR. SMOAK: If you make that mandatory, aren't we going to run into tremendous technical difficulties as against what's already existing?

MISS LEVERETTE: Not if you classify.

MR. WEST: Let me ask Dr. Bain a question here. How long would it take you with a minimum of interruption from all of us nit pickers to go through all of your recommendations so we can get the whole picture? Could you do that in the next fifteen or twenty minutes if we don't interrupt you too much?

DR. BAIN: On both counties and municipalities?

MR. WEST: Counties.

DR. BAIN: I think I could do it in less time than that.

MR. WALSH: I'm not so sure that we're not going to have to see the picture on municipalities and metropolitan areas---

MR. WEST: Let's do this. I think in fairness to Dr. Bain we ought to give him a chance to present the whole picture and then let's pick it to pieces instead of doing it now.

DR. BAIN: Well, sir, I'll go through and point out what's there and I'll try to justify. All right, we have looked at page 27. On page 28, I think we might skip this for the time being. Provision relates to consolidation of counties. I think we could come back to that if that is satisfactory. The question on the bottom of the page for the continued present provision on the removal of county seat. I believe we can pass that. Now, I have already made reference to the provision on page 29 which requires general law provision on governmental structure. That ties back in to the system of classification. Beginning at the bottom of the page, I have already made reference to the counties of powers and the provision on page 30. That, too, requires general law for the powers, duties and functions and I made reference to that. That ties back, also, to the provision on classification. Now, on page 31, I gave you the language from the home rule---from the Model State Constitution that provides for home rule for counties, but in my recommendation I do not recommend this. I do not think it is warranted provided that the provisions relating to metropolitan counties, which begins on page 37, are adopted. If we could turn now to page 37. Here is a provision that attempts to cover the situation of the emerging metropolitan areas. Beginning on 37. I think I would like to read the language. It is a little bit long. "Notwithstanding any other provisions of this Constitution, any county with a density of population in excess of 100 inhabitants per square mile, as determined by an official census, may consolidate with the municipalities within its limits into a single unit. The General Assembly shall provide by law for a referendum on such consolidation upon request of the governing body of the county, the governing body of any municipality within the county, or ten per cent of the registered voters within the boundaries of the county. Such merger shall not take place unless approved by two-thirds vote." In other words, it requires a referendum. Those are details. I want simply to point out that here is a provision in the Constitution that permits the consolidation of a county and all of its subdivisions. Now, on page 39. Provision relating to the organization and powers of these metropolitan governments. "Any metropolitan area which

consolidates as a single unit of government shall have the power to adopt and to amend a charter in accordance with the provisions of Section _____, above, concerning home-rule for cities." That requires us now, sir, to turn back to page 35. There is a provision dealing with home rule for certain cities. Here, the language in this draft suggests in excess of 75,000 and the subject, the second paragraph is the important one for our consideration here. "Subject only to the restrictions set forth in this section and notwithstanding other provisions in this Constitution or in general law, any city so eligible shall have the power to frame and amend a municipal charter setting forth its governmental structure and organization, powers, duties, functions and responsibilities. No municipal charter so framed shall contain any provision differing from this Constitution or from general law requirements on the following matters:" and there are eight things in which it is felt that they should not have control over, some you might want to exclude, some you might want to add to that. Now, sir, then I don't need to read the last paragraph. In essence, what this draft sets forth is this. A system of classification of counties and requirements that the Legislature enact general law provisions on the governmental structure for each class. General law provisions on the powers of each class, but that it provide that whenever a unit seeks---a county with its municipalities so decides to consolidate if it meets the minimum population requirements, then it can elect, it can utilize a home rule provision which would be the same as provided for the larger cities. That is the package.

MR. WORKMAN: In effect, it would be that a county as well as a city could provide for its own home rule.

DR. BAIN: Right. Not a county alone, but only where a county consolidates with all the units---

MR. WORKMAN: Includes the county units.

DR. BAIN: You could not have, sir, a situation in which a county has a home rule provision and a city within that. Specifically, the City of Columbia could not have a home rule provision and Richland County a home rule provision. If, presumably Columbia could, but if they consolidated then for the consolidated unit that could have a home rule.

MR. WEST: And the test is a minimum population of 75,000 plus a density of 100 persons per square mile.

MR. WORKMAN: Density relates to counties.

MR. WEST: Right. You couldn't have a city-county combination unless there was the minimum population of 75,000?

MR. WORKMAN: No, it's the density that determines the county.

MR. WALSH: Let me ask you this question. As I read what Dr. Bain says, "the General Assembly shall". What happens if the General Assembly just doesn't do anything? Have we advanced anywhere?

MR. WEST: Well, isn't there a general principle of law---the courts would interpolate---in other words, wouldn't it be self-executing?

MISS LEVERETTE: Well, in some constitutions, they have provided within a certain length of time, they shall. Haven't they done that, Chester?

DR. BAIN: Yes, they have. The idea here was that the word "may" suggests to some people that this gives the General Assembly an out. The word "shall" suggests that it does not.

MR. WALSH: I'm just wondering. Suppose they just don't exercise that option? Have we advanced anything?

MR. WORKMAN: Yes. We've provided the machinery and the vehicle for public pressure and we also have given the Governor some incentive to require compliance with the Constitution. He can make an issue out of it, right.

MR. WEST: He can call the General Assembly in special session.

MISS LEVERETTE: I think we have to assume that they will.

MR. SINKLER: Frankly, I think your---your limitations on page 36 are very good and that's the thought I was groping for a little while ago.

MR. WEST: I sorta'like the package.

MISS LEVERETTE: I do, too.

MR. RILEY: I don't know if it's because he just knows more than we know.

MR. SINKLER: I'm still not willing to buy the five classes.

MR. WORKMAN: Let me ask this, Chester. Without---I don't want to muddy the waters---is there provision in what you have given us or what is here that you haven't read, which would permit incorporation of a home rule feature for metropolitan areas across county lines? Like Columbia, West Columbia and Cayce?

DR. BAIN: Only by the subsequent merger of counties.

MISS LEVERETTE: You wouldn't want that, Bill, anyway unless you had a merger.

MR. STOUDEMIRE: I don't agree with that at all. I don't agree with Sarah's statement.

MISS LEVERETTE: I don't think you want that.

MR. SMOAK: Wouldn't that cause tremendous problems, Bob? Legal problems?

DR. BAIN: You could consolidate and then do it.

MISS LEVERETTE: You'd have a mess on your hands.

MR. WORKMAN: In other words, as it is drawn here, the two counties would have to be consolidated before you could achieve effective home rule for Cayce, West Columbia and the City of Columbia.

DR. BAIN: I think there could be two alternatives. (1) The two counties could consolidate and then they move under this provision or one of them could move under this provision and then there be a subsequent consolidation in which case it would bring both of them under it.

MR. WALSH: I don't think that's going to solve a lot of our problems.

MR. WORKMAN: Well, this is a specific---as I look forward to government in this area here, I see much more benefits to be achieved by bringing Columbia and Cayce and West Columbia together administratively than would be probable by bringing Richland County and Lexington County together where that could be achieved.

MISS LEVERETTE: Wouldn't you run into a lot of problems there, though?

MR. STOUDEMIRE: I don't think we have got a problem. The law is now that we people in West Columbia and Cayce could annex to Richland County if we people vote positive. Not the whole county.

MR. WEST: I think that's right.

MR. STOUDEMIRE: Now, you see, I take the position, perhaps, that if we in West Columbia and Cayce are not willing to transfer to Richland County, then I think we're going to vote down merger. See what I'm getting at.

MR. WORKMAN: Yes. You can annex provided you leave the residue with certain---

MR. STOUDEMIRE: If you leave the method of changing from one county to another to the small segment that is affected, then I don't think we've got a particular problem. Now, if you say county-wide vote, you see, you're back in Lexington County which would forever kill our going across.

MR. WEST: That's in the law now.

MR. SINKLER: I didn't think we would cover by any stretch of the imagination the situation of counties, the number and the method of perhaps consolidating counties or perhaps covering the situation where one part of a county, small county might want to go with one county and another part go with another county. We haven't covered that, have we?

MR. WEST: No.

MR. WORKMAN: Let's if we can, let's expunge my remarks. I was concerned over that point.

MR. WEST: Well, now, as I see, Doctor, the recommendations that you have made is that we have classifications, actually both cities and counties, in the discretion of the General Assembly, but not to exceed five and if the municipalities or the counties, with certain criteria of density and population, then they have home rule, subject to these eight restrictions and they can pass any law they want as long as they don't transgress these eight general areas.

MR. RILEY: What is the theory of the density, Doctor? Why is it that a small county couldn't do this?

DR. BAIN: On the simple assumption that when you go into these things that--goes back to the role of a local government in a total governmental structure. A small unit is not faced with providing the same type of problems and services that are faced in a highly urbanized, densely populated areas and you've got a need for this type of thing. Especially when you handle it through fair and reasonable general law.

MR. SMOAK: What if you have a county now that has the worst possible government, just imagine a small county in South Carolina, and there is a move on politically in that county to do something about this? They want a complete reorganization of county government? Where do they stand?

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DR. BAIN: Where do they stand if this is adopted? They would come under general law provisions for organization and powers of the class of county in which they fall.

MR. WALSH: It would guarantee the local people--

MR. SMOAK: The only difference, really, would be the guaranteed possibility for home rule. Isn't that right?

MR. STOUDEMIRE: Mr. Chairman, if we can agree on the general thing, I think that the size of home rule would be open when we get to that particular section.

MR. SINKLER: I have yet to see---I can't get it through my thick head the desirability for five classes, five classifications. I don't see that at all.

MISS LEVERETTE: Well, Huger, don't you feel that unless you do that, you're not really accomplishing what I think we're trying to do. If you leave that general law provision you're speaking of open ended, you could have all sorts of---

MR. WEST: Huger, we have classifications now. Municipal and county and then we have this thing---special laws where general laws are applicable.

MR. STOUDEMIRE: Mr. Chairman, are we still sticking with the public hearing aspect of this thing?

MR. WEST: Yes.

MR. STOUDEMIRE: What I'm thinking about is if you buy the idea of a certain number of classes, this would be, as Emmet says, a good horse trading point maybe and if there is violent reaction in the hearing and I think if senators realize what the thing says, my guess would be that some would be there.

MR. WEST: I think it would be a good thing for the Municipal Association to comment on and also the County Government Association as to the number of classes that they think appropriate. Mr. Outz, do you have a question, sir?

MR. OUZTS: (Representing Municipal Association) I would like to ask a question. Page 36 Sub-section (4). Is income tax and is sales tax, is that exclusively for the use of State government?

MR. WEST: Yes. In other words, to answer your question, Bill, I don't believe that the municipalities under the existing law have a right to levy an income or a sales tax.

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MR. OUZTS: Under existing law. You have also excluded it again, haven't you?

MR. WEST: Right.

DR. BAIN: This would permit---the Legislature could designate certain things. If it has not done so already, it could designate some things reserved exclusively to the use of the State Government which would then, the general law implementing this provision---

MR. WEST: In other words, there is nothing in this provision to say that the State shall not provide that municipalities with home rule can add a 1% sales tax, but you couldn't do it without express State permission since the sales tax is presently preserved for collection by the State.

MR. STOUDEMIRE; Mr. Chairman, let me ask a question on procedure. I assume that we are reaching now for some general agreement. I assume further that we are going all the way through these things individually, are we not?

MR. WEST: Yes, I assume--

MR. STOUDEMIRE: I think there might be questions to raise on whether you want home rule for municipalities at what population. I disagree with the author and so on. I think we would leave ourselves unclear, really, if we did not more or less continue forward by each one of the paragraphs.

MR. SINKLER: Let me withdraw my objection to five classifications and assume that that will be covered in a general hearing.

MR. STOUDEMIRE: Frankly, I would like to see what key people in a hearing would say to this point.

MR. WEST: This is one of the points we could ask the Municipal Association---

MR. WALSH: There's one thing that I note in here that doesn't go far enough and that is the 75,000 proposition. That ought to be reduced down to say, 25,000.

MR. STOUDEMIRE: My main point is if we go on through. If we leave, that 100 figure he used there a while ago, density of a county, I'm not sure that everybody agrees to that, but if we leave those details until we get to that point, then we can decide whether a 100 or 25.

MR. WEST: Are we in general agreement with, first of all, a classification system tentatively. Secondly, a home rule provision subject to adjustment as we examine the justification. Are we in

agreement that this shall be, generally, the constitutional provisions? O. K. With that general agreement in mind, I guess the thing to do is to go back and go over it specifically. //

MISS LEVERETTE: Chester, let me ask just one question. I don't want to hold it up, but on page 27, that sentence, "No more than one classification shall be in effect at any one time---". That seems to me like it could be clarified a little bit. What your reference there is to the fact that no more shall be in in any one area.

DR. BAIN: No. The intent is this. The intent is that he shall not have more than five in numbers. You may have three or five. You may not have two systems going at one time. So, the idea is that there will be only one system of classification. Do you think it would be better if it were no more than one system of classification?

MISS LEVERETTE: I believe it would be clearer.

MR. RILEY: It seems like it would be desirable to me just to specify in the first section, "the General Assembly shall establish by law classes of counties by population".

MR. SINKLER: I think that's the only thing you're going to be able to live with. Otherwise, you're going to talk about mountainous classification.

MR. RILEY: Why get into all that other stuff? You know you're going to use population.

MR. STOUDEMIRE: And you say strike, "the relevant criteria".

MR. SINKLER: Every time you use an adjective you really are asking for trouble.

MR. WALSH: Annexation and things like that are on relevant criteria such as population, density, health requirements, sanitation requirements. They don't put it on the basis of road requirements. They don't put it on the basis of roads or anything like that. Those things exist and those ---affect everybody in the area.

DR. BAIN: May I explain. The idea was this. You might have an instance in which you have a county that is small in size and it's small in population relative to others, but it may be a very densely populated county and the density of population may be of more significance in determining what class of structure, what type of powers that it has than mere size. If I may use one illustration, in Virginia we had one county which is the next to largest county in the State, but it is so large in population in area that its density

of population means that it does not have anywhere near the problems of Arlington County, for example that is number one, has twenty-four square miles.

MR. WEST: You've convinced me. //

MR. WALSH: Your density of population is your single biggest factor in county and municipal planning. Fire problems, for instance. You'd be living right next to each other. All those things are related to density of population and not total population.

MR. McLENDON: You might need it in Horry County, too. If they divided the county down the inland waterway, the density of Myrtle Beach and up and down---wholly different from the rest of Horry County. Two entirely different philosophies.

MR. WORKMAN: There is a question pending right now in Sumter County with the annexation of an outlying area. You are going to reword that classification thing somewhere.

MR. RILEY: You think it ought to be by an official census or by the latest officiaial census?

DR. BAIN: Sir, if I may explain the language there. Very frequently you see it according to the last official U. S. census. Well, this is ten years---

MR. WALSH: Not necessarily. You can have special census.

DR. BAIN: But if you stipulate the last preceding U. S. census, then that would confine you to the official census. This language is designed to permit a special census, either what is carried by the Bureau of Census or one that is authorized by---the State division as long as it is an official census.

✓ MR. WORKMAN: There is pending in Congress now a more ✓ to set five year, census every five years which would not be for the purpose of reapportioning Congress, but which would be a nose count.

MR. RILEY: Of course, the General Assembly could put that in. They could specify the latest census.

DR. BAIN: Page 28 at the top dealing with county consolidation. This provision does not cover---I've embarrassed to say---what I said a moment ago it did cover. This provision covers only "The General Assembly shall provide by law for the consolidation of two or more existing counties upon request by the governing bodies of the counties or petition by ten per cent of the registered voters in each of the counties involved. Such consolidation shall not take place unless

a majority of the qualified voters voting on the question shall vote therefor in each of the counties involved, but such election shall not be held more frequently than once in four years in the same counties." Now, it does not cover the consolidation of a county and a part of a county.

MR. SINKLER: And it doesn't cover the prohibition I suggested that there be no more than forty-six counties.

MR. WALSH: We ought to cover that.

MR. WEST: Is there another provision in the existing Constitution that you did not transpose. I'm sure there's another provision that provides for the annexation of areas.

DR. BAIN: Annexation of areas to counties?

MR. WEST: Yes. You have not transposed that. Is there any reason to change the existing procedure? Let's just check it briefly.

MR. WORKMAN: Well, it relates to the withdrawal of certain sections---

MR. SINKLER: I don't think that will work, Mr. Chairman. That always sort of makes it impossible to leave a county without a certain---

MR. WORKMAN: Population, area---

MR. SINKLER: My idea is---I think you've somewhere got to say there shall be not more than forty-six counties. I think you need that in there.

MR. WEST: Well, Section 7 of the existing Constitution. Alteration of county lines. "The General Assembly shall have the power to alter County lines at any time: Provided, that before any existing County line is altered the question shall be first submitted to the qualified electors of the territory proposed to be taken from one county and given to another, and shall have received two-thirds of the votes cast: Provided, further, that the change shall not reduce the County from which the territory is taken below the limits---". Well, now is there any reason not to carry over that?

MR. WORKMAN: There should be some provision left for the continuation of that type of change. The most recent, I think, of any size was Jasper and Beaufort.

MR. WEST: In other words, I think we---do we agree with the principle that if in a given area two-thirds of the people vote to move, they ought to be able to move and go to another county.

MR. WORKMAN: Yes. That right ought to be provided.

DR. BAIN: Well, on page 26 I had assumed that that particular problem would be---without making it explicit, the paragraph there reads "Until changed by law, the boundaries of the several counties shall remain as established at the effective date of this Constitution"

MR. WEST: I think that we ought to write in some of the safeguards of Section 7 of the present Constitution. //

MR. SINKLER: I agree, but I don't think you want to prevent something happening such as suggested by these conversations. For instance, Summerville moving over to Charleston and the rest of the county, St. George and those going up to Orangeburg.

MR. WALSH: You need to say how that can be done and how it can be done---

MR. STOUDEMIRE: Mr. Chairman, we have no objection to what we have here now providing consolidation of two or more counties. Now, then, we need a gimmick based, in essence, on our old Section 7 which tells us that you can combine a fraction of a district. Now, based on the thoughts that have been going around here, as I see it, we're down to the question, do we also want to say that there cannot be more than the counties which now exist? //

MR. WEST: I think we ought to say that there shall be no more than forty-six counties.

MR. SINKLER: And such lesser numbers as shall result from---

MR. WEST: --from any consolidations as provided herein.

MR. SMOAK: When you're talking about these portions of counties, what do you think about the idea of allowing the procedure to commence upon request of the governing body of one of the counties concerned, rather than both? For instance, if you have a portion of one county, as we do, combined in the school district of the adjoining county--- that ought to be Aiken County and it's an awful mess the way it is now, yet you'd never in this world get Edgefield or Saluda County to opening this issue and it seems to me the Aiken County delegation could get the wheels going and then if the people voted for it in the two counties it ought to be.

MR. WEST: What's the motion now?

MR. SMOAK: With regard to annexing a portion of a county, we were thinking of perhaps changing the language to authorize the commencing of this procedure upon request of the governing body of one of the counties, rather than both. Then, if the people support it.

MR. STOUDEMIRE: This would be a re-wording of Section 7.

MR. WALSH: Well, that definitely ought to be covered because you could have a situation where one group of people within one county actually wanting to attach themselves to an adjoining county, but absolutely powerless to take any action.

MR. STOUDEMIRE: Then, gentlemen, if you are ready to go on, we will read Dr. Bain's section here on consolidation.

MR. SINKLER: No. That's where you've got to work on that. You've got to provide that---using illustration as a simple means of putting over the point---of allowing Dorchester County to divide itself in half and go half to Charleston and half to Orangeburg. That thought's not covered.

MR. STOUDEMIRE: Well, it will be covered when we pick up on old Section 7, Huger, won't it?

MR. SINKLER: No, because you are always just annexing a part of it and leaving the balance alone. You've got to have a situation where you could actually let that county split itself in half and abolish the county. For instance, I think McCormick County is probably going to annex itself to something, don't you think?

MR. WORKMAN: Well, now, Huger, as it reads at present under Section 7 of the existing Constitution. "The General Assembly shall the power to alter County lines at any time: Provided, That before any existing County line is altered the question shall be first submitted to the qualified electors of the territory proposed to be taken from one County and given to another, and shall have received two-thirds of the votes cast:---" Now, if that in itself would permit what you suggest being done in Dorchester County, except that the next proviso knocks it out. It says, "That the change shall not reduce the County from which the territory is taken below any limits---". So, if we're going to combine, this has to be rewritten so as to permit specifically what you've got in mind, the going out of business of a county and dividing itself up among two or more existing counties.

MR. STOUDEMIRE: All right. I think I can get it all in here. His sections on consolidations. Pick up with this thought on old Section 7 for alterations which would further provide that you could alter in a manner so as to divide a county up in any number of ways and abolish the county. You limit that the counties cannot go to more than forty-six.

MR. WALSH: I think you've got to go further and permit a group of people within that county to initiate whatever action---I think you're going to have to put that in the Constitution.

MR. SMOAK: That's in there now.

MR. WORKMAN: Well, not as relates to this point. It's in there as relates to the consolidation of counties where you can have the governing bodies of two counties or a percentage, 10% I believe it is, of the electorate. Now, what we are concerned with here is allowing the initiative to come from a group of people in an area who want to annex to another county regardless of what the county board determines to do.

MR. SINKLER: John, your idea that this is a drafting problem is essentially right.

MR. STOUDEMIRE: And then, of course, I forgot to mention Mr. Smoak's idea, one or both and that would, I think, give us the essentials. Mr. Chairman, we need to devote a little attention before we pass on to the technicalities, The second paragraph on page 28. "---shall provide by law for the consolidation of two or more existing counties upon request by the governing bodies of the counties or petition by ten per cent of the registered voters in each of the counties involved." Now, I assume we agree that the petition process is O.K., as well as the governing body. That ten per cent be a fair representation.

MR. WORKMAN: Now, this is petition to the General Assembly, right. You've got to spell it out.

DR. BAIN: "---provide by law---upon request by---" The request goes to the General Assembly. I think a key thing to understand is that this provision requires action by the Legislature in all the counties, not any one. All of them and requires 10 per cent of the registered voters in all of the counties involved. Not just one or two of them. In other words every county---

MR. WALSH: You're talking about consolidation now.

MR. STOUDEMIRE: We want to make sure about those figures.

MR. WORKMAN: And so Section 7 will then be integrated---

DR. BAIN: Two-thirds vote.

MR. WALSH: Why do you want two-thirds?

DR. BAIN: The present provision, Section 7 calls for two-thirds vote.

MR. WALSH: Why is that good?

MR. WEST: I think it is, Emmet, because you can get an emotional issue and a majority can be swayed. I think if two-thirds don't want it---

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MR. SINKLER: Now, when you get down to the bottom of page 28. "No County Seat shall be removed except the provisions of this Section shall not prevent the destruction of a county through the process of merger" or something to that effect.

MR. STOUDEMIRE: Gentlemen, I think we're getting our fractions mixed up. The upper section, it is the majority, isn't it? "***unless a majority of the qualified voters voting on the question shall vote therefor***" and this down here about the County Seat takes two-thirds.

MR. WALSH: If you are going to do the other by a majority you ought to do this one.

MR. SINKLER: No, I don't think you want to move a County Seat without two-thirds.

MR. SMOAK: We have some real problems in certain areas in this regard. Again, I go back to my county. We've got North Augusta and Aiken and they are getting to be about the same population and North Augusta doesn't want to put one penny into Aiken and vice versa.

MR. STOUDEMIRE: John, at the bottom of that page, that is a direct quote from the old section. I think the question is, shall it be retained? /

MR. WEST: Anybody object to retaining the present provision? //

MR. SINKLER: That's all right if you make it clear it doesn't affect the---you do abolish a county seat through merger or consolidation.

MR. STOUDEMIRE: Unless a county is abolished.

MR. WEST: Let the county abolish, right.

MR. WALSH: Abolish or ceases to exist through merger or amalgamation with an adjoining county or counties. What I want to get in there very clear is that the best thing in the world that could happen to us in the State of South Carolina is divide everything up into about twenty or twenty-five counties. And let's be sure that there is a very easy, clearcut, well-defined way in which that can be accomplished.

MISS LEVERETTE: You want that road left open, don't you, Emmet?

MR. SMOAK: And do away with about 75% of the magistrates.

MR. STOUDEMIRE: John, bottom of page 29. "The General Assembly shall provide by general law for the structure and organization of the governments of the counties in each of the several classes established. Such provisions shall apply without exception to all counties in the same class." /

MR. SINKLER: Yes, but I want to tie in the thought that the classification should involve the necessity for general laws in the areas spelled out in the other sections. That's too easily said and produces problems. I don't want the General Assembly passing a law for class number five which would be within the ambit of any of these things over here on page 36. I don't want class five counties having the right, the General Assembly have the right to legislate the class five counties alone in connection with any of the matters set forth on page 36.

MR. WEST: That's an excellent point. What do you say, Doctor?

DR. BAIN: At the bottom of page 35 it reads "Subject only to the restrictions set forth in this section and notwithstanding other provisions in this Constitution or in general law, any city so eligible shall have the power to frame and amend****".

MR. SINKLER: You don't follow me. I don't think you do. You've got here---we are discussing actually this business about general laws within the five classes. I don't want the General Assembly to have the power to legislate for class number five, for example, in the area covered these things, 1 to 8, on page 36.

MISS LEVERETTE: Now, one of them you're talking about cities. The other you're talking about counties.

MR. SINKLER: I'm not talking about cities. I'm talking about substance. He's got it in the cities section, but I'm saying that---

MR. STOUDEMIRE: What he's saying is that to take care of him you are going to have to put those same things---be sure you put those same things in each of the laws for the five classes, I think.

MR. SINKLER: That's right. In other words, I don't want the General Assembly to say---not necessarily those, but if you kill a man in class five, it's manslaughter and it's murder in class two and that sort of foolishness.

MR. WALSH: Well, Huger, though, aren't you going to defeat the whole purpose? For instance, class one may consist of five cities and in order to carry forth their purpose, maybe they ought to have an income tax.

MR. SINKLER: Now, I'm not talking about taxation. I'm talking about criminal matters.

MR. WALSH: I agree with you 100% on that, but on the finance.

MR. SINKLER: I'm just simply saying that unless you look out---I just picked up this as a----

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MISS LEVERETTE: Well, now wouldn't that go in the provision on powers on page 30, rather than---

MR. SINKLER: I want to limit the power of class legislation in certain areas. That's all I want to do.

MR. WEST: Well, haven't we done that? See, it says, "The General Assembly shall provide by general law for the structure and organization of the government". It does not give them---

MR. SINKLER: That's all right. I thought we were on page---. Beg your pardon, I thought we were talking about powers.

MR. STOUDEMIRE: Down to the bottom of the page.

MR. SINKLER: I don't think anybody would object. It's just a question of spelling out the due process.

MISS LEVERETTE: What you want to do is put the same conditions as they put on cities.

MR. SINKLER: No, because I think we might want to have a certain type of license tax in one class of counties and you might want to do it differently tax-wise, but not criminal law-wise.

MR. STOUDEMIRE: A thing here does worry me a little bit. Do we--- do you interpret this, then, that you cannot pass a law applicable to all counties, regardless of class. In other words, that all counties shall have a dog catcher. Now, would this language prevent this or would you have to repeat that into five sets if you had five classes?

MR. SINKLER: I think what you need to say here is "The General Assembly shall provide by general law for the local governmental functions". I think you want to put "for the local governmental powers, duties and functions to be exercised". "Local governmental" I think, will take care of it and make it clearly intend to relate to what we call municipal law rather than basic law. "The General Assembly shall provide by general law the local governmental powers, duties and functions to be exercised in each of the several classes of counties."

DR. BAIN: Well, I think this is limited---maybe I still don't read you correctly. This section would be limited exclusively to counties. In the subsequent section that we have not yet reviewed there is language relating to municipalities.

MR. SINKLER: What I'm trying to put across is this. Let's take you've got class number one counties. I don't want the General Assembly

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saying on a super highway class number one counties you can drive 30 miles an hour and class number two counties you can drive 35 miles an hour. That's a subject to be regulated by State general law yet the way you've got this worded, they could do just that. I don't know whether they'd do it, but I still don't think---

MR. WALSH: What you are trying to say is that you want the structural organization of counties must be on a class basis.

MR. SINKLER: And not laws on general subjects. I think you need the words, "provide by general law for local governmental powers".

MR. WEST: That's too vague, I think. How about this? "The General Assembly shall provide by general law the powers, duties and functions to be exercised by counties, generally, and in each of the several classes of counties." That would give them the right to legislate generally and specifically. Then put in a provision, "provided that the laws applicable to the classes shall not include any of these eight----"

MR. SINKLER: No, no. I don't think you need the eight. I think you've got to come up with some awfully good language. Say it again.

MR. WEST: "The General Assembly shall provide by general law the powers, duties and functions to be exercised by counties, generally, ----"

MR. SINKLER: "---- by counties generally and where a law is applicable generally, the power to classify shall not exist".

MR. WEST: Pre-empt the power to provide.

MR. SINKLER: That's right.

MR. WEST: "And the presence of a general law shall pre-empt the right to enact identical laws in the class".

MR. RILEY: No local law will be enacted where general laws---

MR. WORKMAN: Can be made applicable. That's the present language we've got now.

MR. WALSH: Let me ask you a question because I don't know if I can follow all of this. Now, under your, what you have in this Constitution, Doctor, can a county still tax the city to pave the county roads and don't pave any city roads? Are we going to still maintain the duplicated system of government that we have now in this State?

MR. SINKLER: Yes, unless you go through the merger.

MR. WALSH: You'll never get a consolidation as long as you're going to permit one group of people to tax another group of people to pay for what they get. I think that we ought to put a provision in there that for any services accrued to particular groups they cannot tax another people for it.

MR. WEST: Well, now your word "services". Just for example, DuPont has a third of our assessed valuation. We couldn't tax DuPont for our schools. They say they don't have any children. They're a corporation.

MR. WALSH: You can exclude schools.

MR. SINKLER: All right, how about the fact that DuPont's brought a lot of people there who are living in an area that need sewage. You going to let DuPont escape sewage?

MR. WEST: Well, now, we exempt DuPont---

MR. WALSH: I'm not talking about the taxpayer. I'm talking about areas.

MR. SINKLER: I thought that was a good illustration. Illustration points up the problem. I think what you---of course, you and I were groping along with some language here a year or so ago that would have spelled out to counties the powers to perform functions in areas where they are not now permitted such as water, sewer and all those things, but we were going to add to that a proviso that those areas would pay for them.

MR. WALSH: Yes, and I think we're going to have to put that in, otherwise, we're not making much progress if at all because I guarantee as long as---it's like the fellow getting a job where he doesn't have to work. You're going to have to shoot him to get him out of there. You have one group of taxpayers getting something they're not paying for, they're not going to vote themselves out of that. There's such a denial of the equal protection of the laws.

MISS LEVERETTE: Emmet, did we do something in the financial section?

MR. WALSH: We said we were going to wait until we get to local government.

MR. SINKLER: Let's handle it in finance.

MR. STOUDEMIRE: Emmet, this may help a little bit. On my list I made this morning---you see we still have urban renewal hanging fire. We still have the matter of allocating taxes to the benefits received.

That's still hanging fire. The Attorney General approved my latest search warrant provision which we never had approved. We've got the administrative procedures hanging fire and a few others, you see.

MR. WALSH: The point I'm getting is---I'm not too familiar with other counties---the city is bearing the burden of putting Hercules out there and not getting one red copper from it, but debt.

MISS LEVERETTE: I think that would come under finance rather than in here.

MR. WALSH: The assessed valuation of the city has remained the same and has increased 75% in the county. The county's budget has doubled without raising taxes one mill.

MR. SMOAK: They don't pave any roads for you?

MR. WALSH: Not in the city.

MR. WORKMAN: I still think that your solution is political.

MR. SMOAK: I think it is, too, Bill. The people of Spartanburg ought to get behind that and straighten it out.

MR. WALSH: There's no way to resolve it. We have about 30% of the voters. Isn't that isn't a fundamental, basic thing that ought to be in the Constitution, I don't know what ought to be in the Constitution.

MR. WEST: Let's go on and push ahead. Do we agree in principle on what we want to---the thought we want to put in, namely, that the General Assembly shall have the right to enact general laws applicable to all classes of counties. We approved that, but we wanted to make sure that there was no doubt about it. And, also, that when general laws are enacted applicable to all classes, the classes, themselves, cannot change it, except where home rule has been voted in. They are restricted within the eight specified categories. Now, are we agreed on that? Any objections? Can you make sure that the verbiage carries out those thoughts?

DR. BAIN: I now understand it. I apologize.

MR. WEST: We are in agreement then, so let's press on.

MR. SINKLER: Do you think we should have a home rule provision in this thing for counties only? I rather like the home rule where you merge the cities into the counties, but I don't believe I want---

MR. WEST: You would have forty-six independent counties.

MR. WALSH: I'm inclined to go against home rule for counties only, but home rule if you have a metropolitan---

MR. SINKLER: You have a complete merger of everything except the schools.

MR. WEST: Well, now, my mind isn't clear on the status of school districts and public service districts so at some appropriate time I want to get an understanding of what this does or doesn't do to that.

MR. SINKLER: What do you want done? You want to leave the school districts alone?

MR. WEST: No, sir. I want to put them under county council. The only possible alternative is the publicly elected school board.

MR. WALSH: Gentlemen, I'll say this about the school district. If you have a publicly elected school board, we ought to put in some constitutional guaranty that when they vote bonds and raise taxes at least ought to notify the people a day or two ahead of time. You don't even find out about it until a year later.

MR. WEST: This may be legislative-wise, but I think the proper procedures for the hearings and things of that nature---

MR. SINKLER: You want to make it mandatory if the merger---I guess we ought to wait and see if we want to abolish, eliminate the home rule for counties.

MR. WEST: Page 31.

DR. BAIN: That is not recommended.

MR. WEST: In other words, you do not recommend home rule for counties.

MR. WALSH: I accept that recommendation.

MR. WEST: All right. If no one wants to argue for home rule for counties, let's pass on.

MR. STOUDEMIRE: As coming up later, home rule would be provided for metropolitan areas. Do you want to eliminate home rule possibilities for a county like Orangeburg which would have 70,000 people---in other words, your population is spread all the way out so when you stack it up, it may equal to almost some of your metropolitan type counties where it happens to be concentrated.

MR. WEST: That comes into the numbers game, doesn't it or not.

MR. WALSH: A city is dead unless it has something like a power system.

MR. WORKMAN: I'd like to ask Dr. Bain this, now. Do you visualize that home rule for municipality gives that city the right to, in effect, draw its own charter of government within whatever limitations--- and they determine how they're going to function, make their own appropriations, levy their own taxes, control their own affairs insofar as they do not conflict with the general law in police areas and so on.

DR. BAIN: That's right.

MR. WORKMAN: Now, Huger's idea is that---and apparently yours, too, is that that right not be given to a county. What I want to find out, is what's the rationale of not allowing a county to do this?

DR. BAIN: May I add one point. The same thing would be given to any unit that merges. My argument would be, have the Constitution encourage consolidation with merger. You've got a county with home rule and a city with home rule operating or, specifically, Columbia with home rule, Richland County with home rule.

MR. RILEY: All within the same---home rule on top of home rule.

MR. WORKMAN: If you take a county which is of relatively compact, small---take Cherokee, relatively small, compact county with no overriding municipality, why couldn't Cherokee County avail itself of home rule for that county?

MR. SINKLER: Because if you do it what you are encouraging is multiplicity of governmental functions whereas you ought to try to eliminate---you ought to try to simplify and you're compounding. What you're going to do is to end up with something like Montreal or Miami. Government on top of a government. What we're trying to do is eliminate government and try to encourage this one, single uniform---the Virginia plan of Richmond.

MR. WORKMAN: I agree with the goal of the thing. What I have difficulty reconciling is the fact that a city, 75,000, or whatever we want to make it---a city the size of Greenwood could, under the terms here, achieve home rule for itself within its corporate limits. Now, the advantage accrued to that city, I think, also, should be accorded to a small county.

MR. SINKLER: I haven't bought the home rule for the city yet, myself.

MR. WORKMAN: What I'm trying to get is, why for one and not for the other?

DR. BAIN: On the assumption there that a city, above a certain size, is going to have certain problems. Counties over a certain size---

MR. WEST: It's the density of population.

DR. BAIN: ---are going to have problems and as long as they remain below that level or have certain extenuating circumstances such as density, that they would be better off operating under the general law provisions than just letting them---

MR. WEST: In other words, problems don't get too complex until you get a whole lot more people in a closer situation.

MR. WORKMAN: Well, within the general law for classification of counties, would there not be a form of government which would closely approximate home rule so that they could achieve what county efficiencies---

DR. BAIN: If the legislature saw fit. It could extend a form or a limited form of home rule to counties---let's say, whatever you start with---classification one is your largest county---

MR. WORKMAN: If they want to come into that under the general law they can achieve---

MR. WEST: In other words, I don't see, frankly, talking about home rule now, I think I'm for it, but I don't see very much difference, in practice between home rule and classification. The largest cities classified---

MR. SINKLER: They have all the powers now that they could ever get under any home rule.

MR. WEST: That's one of the questions I have. What additional powers or advantages would accrue to a city---

MR. WORKMAN: I would say that Charleston County now has home rule. I would say unfamiliarity with the term---

MR. McLENDON: That's what worries me, the use of the term as opposed to the other programs---

MR. STOUDEMIRE: I'm assuming that the General Assembly setting up laws for a particular class, if it did not offer alternatives to begin with, that pressures would build up and therefore a part of this, for each set, I would assume that you would have some discretion

as to your form of organization, wouldn't you? Or you could very easily, you see. If you come out with counties, 20,000 to 30,000 as a class and they only provide a governing board with a chairman and those people wanted a manager opportunity, then I would think they could bring the pressure to get the law changed so that they could vote on that. One thing about home rule, too. I think you've got to have if you're going to have a home rule charter, you have to have a---the citizens have got to be sort of organized and stand behind you and willing to do the drafting and this type of thing.

MR. WORKMAN: Let me ask you one very vital question. If we have got, within a county, which has adopted a form of county government under one of the classes here, if we have, within that, a city, say, Rock Hill within the county of York. If Rock Hill determines to go into home rule, what effect does that home rule have upon the relationship of York County to Rock Hill?

MR. SINKLER: None at all unless you provide that when a city goes into home rule, it shall be exempt county taxes.

MR. WORKMAN: That's what I was getting at.

MR. SINKLER: There's no use to have home rule unless you put that one provision in there.

MR. WORKMAN: Well, now, is that contemplated in what you've got?

DR. BAIN: I don't think so.

MR. WALSH: We're going to have to put something like that in it. Otherwise, we're just going around in circles.

MR. SINKLER: Well, you've got home rule in a sense now in every city of South Carolina.

MR. STOUDEMIRE: You might read the city-manager form of government applying to Aiken and Cayce in which these people, in effect they've got home rule by a special act of the Legislature. This charter was drawn up by Aikenites and then they gave the delegation, "Here's what we want". It is introduced as a general law---I mean camouflaged as a general law in the population class, but within this charter, you see, they go into great detail as to the regulation of the accounting for public works. In other words, they make it a matter of charter, shall we say, or State law as to the details of the accounting, the personnel system and all these other things, which I would argue they have the right if they want to have the charter law saying that there will be a personnel system.

MR. WORKMAN: They don't have the right to do that now?

MR. STOUDEMIRE: They do by ordinance, but you see the thing is, since Aiken essentially has home rule in doing this, for all practical purposes, city council in Aiken now would be behind the eight ball in changing---would be by charter. They would have to change that charter in order to change the county procedures, you see.

MR. WORKMAN: And would the changing of the charter require legislative action?

MR. STOUDEMIRE: Now, but---

MR. WORKMAN: Well, Aiken County then virtually is frozen within the confines of the charter adopted pursuant to legislative action.

MR. STOUDEMIRE: Yes, but you see, really, it was done by Aikenites and _____ as home rule, but since you don't have any home rule powers it had to be enacted by the legislature.

MR. WALSH: The only fallacy with your argument, Bob, is that the General Assembly could go down there and un-home rule it and they can't have anything to do about it.

MR. STOUDEMIRE: But I was using this as illustration. Let's assume Aiken County did have pure home rule. If you read its charter laws it would show you what you would put into a home rule charter and provides in much more detail than what the State law does. The State law just says that the Clerk and Treasurer shall make an annual report, you see.

MR. WORKMAN: Yes. Aside from the details of administrative procedures and all. What I'm trying to get to---it's something that I think is bugging Huger, too, is that an incorporated municipality now has the right to levy taxes, make appropriations, charge municipal services and all that, but now, what, under home rule could it do that it does not do now?

MR. WEST: I'll give you an example. We had to pass a legislative act last year allowing the city council to raise the mayor's salary.

MR. WORKMAN: So home rule would extend and expand the authority to do administrative things within your sphere.

MR. STOUDEMIRE: Now, one step further, Bill, which Professor Bain doesn't bring up here. You can have what is called constitutional home rule and we could say in the Constitution now that municipalities over 50,000 shall have home rule powers which shall include the right to determine their tax structure and anything else you wanted to name in there.

MR. WEST: You don't recommend that or---

MR. WALSH: That's where most of your home rule comes from.

MR. STOUDEMIRE: That's where your strict home rule comes. You see, what has happened over the years---old State law, home rule, wham--- goes to the court, the court says "for the State, for the State", so then they got wise and said well the way you overcome the State, you just spell out one, two, three, four, five and anything else you want to in the Constitution.

MR. WORKMAN: And the optimum benefits which will accrue from home rule becomes, in most instances or in greatest measure I'll say, where you've got merger of city and county, right. Otherwise, the benefits which accrue to the City of Rock Hill through home rule and its proper management of its internal affairs simply subjects to the County of York a more lucrative target for taxation.

MR. STOUDEMIRE: Home rule, as John pointed out a while ago, would provide the City of Rock Hill the right to have forty councilmen, would provide them the right to pay the mayor \$30,000 instead of what the State law--maximum says \$10,000. It would allow them to decide, really without bothering with the State law whether they are going to do it by wards or what not, it would allow them the right to provide all detailed accounting procedures or anything else they wish to detail.

MR. WEST: Or to have the city manager form of government.

MR. WORKMAN: In effect, it just spells out in detail--just says that we are going to run our own affairs so long as we don't tread on State law.

MR. STOUDEMIRE: Then the State laws would say, you cannot have anything in here---

MR. WEST: You can't put a sales tax on---

MR. STOUDEMIRE: You can't take over the State Highway Department, you can't--anything of a statewide nature.

MR. WORKMAN: Could, under home rule, a city impose an occupational tax?

DR. BAIN: If it was not prohibited by the Constitution or by the law. If it has one and decides it no longer wants it, it could decide to eliminate it without going to the legislature each time it wants to make a change. As Bob says, these things, yes--if they

want to increase from five to seven, they can do it without going to the legislature each time.

MR. WORKMAN: It increases and documents and isolates its local sovereignty, doesn't it?

MR. WALSH: Well, I'll say one thing. It does all that, but it simply runs around the one central problem we have in the State of South Carolina. Unless we push away this chaff and look at the problem we aren't getting anywhere. That is finances. That is what is strangling the cities of this State. That is what is prohibiting us from really having any big cities in this State, the finances. You can't tax anything. Property tax and business licenses are the only thing. You don't have the money to solve the problems you have. Why don't you have the money to solve the problems? Because you've got a dual type government in this State and one level of that government will say, we're going to let these other people pay for what we need and unless we face that problem squarely in the face, all this is just a lot of good words. We're not going to accomplish anything.

MR. WORKMAN: Would you prefer as a part of this that we could follow the Virginia plan whereby the city becomes an independent city?

MR. WALSH: Would be far preferable. The single exception is I doubt from an economic standpoint--we have too many areas in the State that could---

MR. SINKLER: What would happen to Spartanburg County if Spartanburg City pulled out?

MR. RILEY: What would happen to Spartanburg City?

DR. BAIN: You'd be in the Virginia situation. There are 96 counties and 38 independent cities.

MR. WORKMAN: What's the outlook for the independent cities? Are they flourishing or not?

DR. BAIN: It's pretty miserable because they can pull out at 5,000 and the minute there is a city-county squabble, they jump to it and the first thing you know they're down at the legislature wanting more State money to run schools. More money for welfare. More money for everything. Those of us that have fought it for years are not objecting to city, county separation. We feel that--in fact, one time we wanted to push it up to 100,000 which would mean that you'd have about two or three independent cities. You see this is the thing, if you proliferate the units of government, it throws more and more burden on the State.

MR. WALSH: I think the key to this thing--would encourage this consolidation is to analyze what it is that the people in the municipalities of this State are being taxed for that they get absolutely no benefit from. Now, when you cut that out, you're going to have a great incentive to consolidate and have more efficiency in local government.

MR. WORKMAN: I just don't see how you can do it in the Constitution.

MR. WALSH: Well, if you can't do it in the Constitution, you're saying that we can't write a basic document.

MR. SINKLER: I think you can do it in the Constitution, but I'm just thinking about what would happen---I'm interested to hear what he says about this situation in Virginia. What is happening?

DR. BAIN: Well, Richmond lost its last annexation proceeding against Enrico County so it's continuing to go ahead. Right now, the move today is to merge Richmond and Enrico County and call it the City of Richmond or something of this type. If Richmond wins another annexation suit against Enrico County, then there is really the problem of what you're going to do with the fragmentation.

MR. SINKLER: That's what I think would happen in South Carolina. I think home rule, frankly, is meaningless unless you establish--use the Virginia City plan, but I don't think--I think that merger is a desirable thing and my idea was to make it attractive as best we can for a merger.

MR. WEST: Well, let's try to---again, we don't want to ignore any important things, but let's make sure we don't grapple with them until we come to them in the text here. We're on the section of home rule for counties.

MR. SINKLER: I move that that be eliminated. //

MR. WEST: Any objection? We'll pass on.

DR. BAIN: Since you've seen what's coming up in metropolitan areas in general---I think there is some relationship, we might look at the provisions on municipalities.

MR. WEST: Right. 32 is our next page. "The General Assembly shall establish by law classes of municipalities, which shall not exceed five***", the same provision as we had.

DR. BAIN: Same provision.

MR. WEST: have we settled that we would like to retain, tentatively, this provision subject to the suggestions and reaction of a public hearing.

MR. SINKLER: And we are going to leave out "other relevant criteria".

MR. WORKMAN: No, we have come back to that.

MR. WEST: We got convinced---I got convinced on that. //

MR. WORKMAN: There's going to be a re-wording on the classification. No more than one---

DR. BAIN: System or size or something.

MR. SINKLER: You're going to have the same protection. Let's pick up that protection language.

MR. WEST: Then we're down to incorporation of municipalities, bottom of page 32. "The General Assembly shall provide by general law the criteria and the procedure for the incorporation of new municipalities. No law for the incorporation of a specific area shall be enacted."

DR. BAIN: The main contention here, sir, to make certain that there are general law provisions on this rather than having petition come in from Crossroads X and Crossroads Y and handle on a special basis and the Legislature would work out a general law procedure that would set forth both the procedure and the criteria to be followed for the incorporation of new municipalities. Now, the Constitution would not limit them to---by general law you would decide whether this should be a certain population density or whether there should be a minimum population, minimum taxable resources or something of this type.

MR. STOUDEMIRE: Also the vote. Our old Constitution says---a majority.

MR. WEST: All right. No objections, we will pass on. 33. This is the incorporations and change of municipal boundaries.

DR. BAIN: The language there: "The General Assembly shall by general law establish the criteria and procedures for the readjustment of municipal boundaries and for the merger of two or more incorporated municipalities. No special laws for these purposes shall be enacted." Again, it requires general law. It explicitly prohibits special laws for the extension of a particular city's boundaries or the merger of two or more.

MR. WORKMAN: You think it's desirable and necessary to put that exclusion in each time---"No special laws---"?

MR. SINKLER: Let's leave it in.

MR. WALSH: Huger, let's bring up a question here. If Greenville had waited for a general law, Greenville wouldn't be half as big as it is today.

MISS LEVERETTE: This says "shall". We come back to that same thing we were talking about a while ago.

MR. WALSH: The very point is this---

MR. STOUDEMIRE: You still could have population class laws under this statement, couldn't you?

MR. WALSH: This is something so critical that it ought to be treated with in the Constitution. Most of your Constitutions give some specific attention as to how you can annex areas for the simple reason that history has shown that you are not going to get anywhere in your legislature on having any reasonable annexation laws.

MR. WEST: Of course, Emmet, that has changed.

MR. WALSH: Changed in just a minute way.

MR. McLENDON: No, we've made tremendous progress.

MR. WEST: The whole annexation picture has changed.

MR. WALSH: The problem still is that we have the most restrictive annexation laws perhaps of any state in the Union. With all this liberalization.

MR. McLENDON: They are not so restrictive now. I think we have moved a long ways in three or four years.

MR. RILEY: You can pick up a sub-division or anything like that if 75% of the people---

MR. WEST: It's darn near too easy now.

MR. WALSH: The key to the thing is that the city's got to wait until the people outside become such a liability on themselves that then they ask to come in and that's not the right procedure.

MR. WORKMAN: Is it not now provided that the city can initiate the move now under the present law?

MR. McLENDON: No.

MR. RILEY: The city can go out and pass a petition which is what they do.

MISS LEVERETTE: Hasn't that been reduced? The percentage?

MR. RILEY: Yes. 75%.

MR. WALSH: That's just not the sort of initiation that's worth a nickel.

MR. WORKMAN: I know it's been terribly difficult to get the correct number of freeholders.

MR. STOUDEMIRE: That has been changed. The city now, I think, can initiate the action if it wants to, but the big gimmick is still that majority vote of those outside, I think, that actually prevent annexation from coming about. I judge what Emmet is getting at is whereby the city would have some right to declare that this area is now thick enough---

MR. WALSH: You see as long as that area outside can make us pay for what they use, why would they vote to come in?

MR. WORKMAN: Well, you've got the situation which has developed in the Columbia area, that Columbia is not going to let the satellite cities live as leeches off of them any more. They're going to sever the connection. That's going to make cities exist as cities instead of paper towns. And this is going to put the heat on them that if they can't live as a rival municipality, they're not going to be allowed to live off the central city. That is the decision which the City of Columbia is making, but it may not apply elsewhere.

MR. STOUDEMIRE: Now, let's speak to one thing the way Dr. Bain has this thing prepared that is a tremendous difference from the way it is now in our Constitution. "The General Assembly shall by general law establish the criteria and procedures for the readjustment---". Now, the way I interpret this, the General Assembly would have the right here if it says that it might provide a court procedure or a board or something else to hear that this is now dense enough and therefore---if it reaches a certain density, the General Assembly by law says it is arbitrarily brought in, you see.

MR. WALSH: They can annex an area now by law.

MR. STOUDEMIRE: Emmet, I do think this provision, though, is broad enough to permit anything you can politically get through the General Assembly.

MR. WEST: Right. I don't see it's a Constitutional provision. Of course, annexation has taken up more than its fair share of time in the legislature since I have been there, but I don't see---how could you improve in this provision?

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MR. WALSH: I think you could write into the Constitution certain procedures for adjusting large municipal boundaries.

MR. SINKLER: Emmet, you couldn't get 15 votes for it.

MR. WORKMAN: That's going to be difficult. Now, the Texas system--- I understand in Texas can just say, o. k. we want this and go out and get it.

MR. STOUDEMIRE: About the only limit is the court can say that this really is going to be a cabbage patch for the next thirty years. Unless you can show that it really and truly is farm or rural.

MR. WALSH: Well, will it give home rule cities the right of annexation on a basis subject to proof that a reasonable---and that it can be properly served with municipal services.

MR. WORKMAN: Emmet, I don't think (and I fully see and sympathize with your problem), but I don't believe you're going to get enough either public support or legislative support on anything which would, in effect, deny the right of people living outside the cities to vote on whether or not they're going to come in.

MR. WALSH: You're denying people in the city to say whether they're going to pave somebody else's road.

MR. McLENDON: That's a political problem. We can't put in here everything to protect us against the politicians.

MR. WALSH: We can put things in here that would protect us in certain basic, fundamental rights of fair play.

MR. McLENDON: The General Assembly is supposed to guarantee fair play and that's what this is for.

MR. WORKMAN: And the court.

MR. WALSH: The Constitution is supposed to guarantee that.

MR. WEST: The Constitution puts certain restrictions on the---

MR. WALSH: That's right. That's right. And it certainly ought to restrict---

MR. SINKLER: Actually what this thing means from a strictly legal standpoint. The General Assembly's got plenary power so that the full first sentence that we're talking about is something that they have had anyway without putting it in. So that is really redundant-- I'm all in favor of it going in, but from a technical standpoint it's

purely redundant. The only thing in this thing is that no special laws for these purposes shall be enacted. That's the only--that's a limitation. The rest of it is redundant because the General Assembly has got---but we've got to be redundant to some extent. Emmet, I think you can get your relief through the General Assembly. What you're now suggesting is that we spell out relief for you which I don't know that it's necessary---

MR. WALSH: Relief for all the cities in the State.

MR. SINKLER: But you're opening an avenue for them doing it this way.

MR. WEST: Don't you have a right to grant a franchise within the city? How did Camden get their own water and light system?

MR. WALSH: Somebody who doesn't have their system is not going to get it.

MR. WEST: But the point is you've got the right to do it.

MR. WALSH: This thing is so manifestly unfair and if a Constitution can't guarantee against that unfairness.

MR. WEST: It's a political problem and in our area the problem is the reverse of yours.

MR. WALSH: It's a political problem, but everything we put in this Constitution is a political problem.

MR. WORKMAN: The difference is that yours is a peculiar political problem that has been solved elsewhere.

MR. WALSH: I don't think it has been solved elsewhere because when I go to these municipal meetings the mayors and councilmen complain of the same thing. They're not as bad as in Greenville and Spartanburg. I'd say those two are the worst in the State.

MR. McLENDON: Looks like it would be the reverse. Looks like they could elect people to the legislature that represented the city thought. The people are there.

MR. STOUDEMIRE: Emmet, your points are real valid, but I'd like to throw out two things that I think will help to overcome your objections. One is, reapportionment per se. The other, and perhaps more important, that I think is going to help cities more than anything else is that you are rapidly having local systems of county government and now in the future, it's going to be the Marion County Council versus the Marion City Council for the favor of the legislature. I think this

is a tremendous change because now---in the olden days, if the delegation allowed the city to pick up 25%, some of the gas tax. The delegation member knew that he, himself, was going to have to add property tax to make up for it and take the blame and now, I say, it's the Camden City Council versus the Kershaw County Council and therefore that the delegation from Kershaw County may go either way and would go to the city way much easier than he would in the days of yore when he had to take the responsibility.

MR. RILEY: That's a good point. If we can get County Council where they do have enough operative authority.

MR. WALSH: As far as solving the problems that we have, I don't think there is any of this municipal legislation that's going to---

MR. WEST: You'll never solve your problem until you get a group in the city aware of the problems and elect a majority of the senators and a majority of the delegation that are pledged to it.

MR. WALSH: Where are we now?

MR. STOUDEMIRE: On page 33.

MR. WEST: We adopted that.

MR. STOUDEMIRE: All right, we're on page 34. I think we have the same problem here to make a law apply to all towns regardless of class.

DR. BAIN: I think the first paragraph could stand as is. I was thinking along the line---

MR. SINKLER: I think this is really better done than the county--the comparable section of the county. I think they should be exactly identical. Didn't we add something to it over there?

DR. BAIN: We agree that something should be added and the language was left and I've been tinkering with some language here. See if it captures the idea. I'm sure this is not the final wording, but in the second paragraph right after it says "in each of the several classes established" put a semicolon "provided" comma "however" comma "that all matters requiring statewide regulation shall be enacted in general law provisions applicable to all classes of municipalities".

MR. SINKLER: I don't know about "requiring". You open a question as to what is required and what isn't. I think that the thought that John had is a better thought that where a general law has been made applicable, it shall control.

MR. WEST: It pre-empts the field,

MR. SINKLER: We are actually going to the Georgia Constitution on that. I'm still thinking about it.

MR. WORKMAN: What about your tense there? Instead of "has been" "could be".

MR. SINKLER: What I would like to say is that whatever we come with one, let's come up with identical language for the other, and I think everybody's going to have a crack at the language later on.

MR. WORKMAN: Well, I think if we move to the future---

MR. WALSH: Well, if you're going to do that now you're going to even compound and make worse that which we already have. You're going to let a county put in sewers?

MR. SINKLER: This isn't sewers. We're working on cities now.

MR. WALSH: Well, I know that, but if you say you're going to put the same thing in cities as in counties---

DR. BAIN: Same restrictions.

MR. SINKLER: I'm going to give you your provision about sewers and use charges and finance somewhere down the line. I agree with you there.

DR. BAIN: I think that some thought or at least the members of the Committee should look at these seven limitations. Provision that "Such laws shall include, but need not be limited to, provisions for the following matters:".

MR. WALSH: You are saying that these are mandatory things, but you can put other things in.

DR. BAIN: That's right.

MR. WALSH: Give them other power. What about the police power? That is a word of art that is used so much in municipal law. Huger, do you think that police power---

MR. SINKLER: I think police power covers so many things. I think that's one of the problems that arose through _____ against Walker case. You can use this police power--Dewey Oxner used it--he was talking about passing ordinances which imposed fines or imprisonment.

MR. WORKMAN: Law enforcement is what he was talking about.

MR. SINKLER: That's what he was talking about. Law enforcement. You would exercise police power, as I understand it, to make a man connect

to a sewer system. I don't like "such laws shall include".

MR. STOUDEMIRE: I don't think you need it at all.

MR. WEST: What's the justification for including them in the Constitution?

DR. BAIN: Well, the idea was that here the Constitution would set forth certain things of which you want to make certain that the legislature did have permission.

MR. WORKMAN: But if you do it negatively---

MR. STOUDEMIRE: I hadn't thought about this before, really, but I wouldn't do it at all, based on our past habits. Our basic 1896 and '98 municipal laws following '95 have provided for general police power for municipalities. We in the Constitution elsewhere have provided the right to incur indebtedness. We have provided for the right to levy taxes by general law. Number 4 is on the statute books. Number 5 is on the statute books now.

MR. WALSH: Yes, but Bob we want to be daggone sure that they are not taken off the statute books.

MR. STOUDEMIRE: You'd have to show me why you think they might be. They've been on there since 1895.

MR. WALSH: Well, some of these things are in the Constitution. What about the power to acquire utilities? That's in the Constitution now.

MR. STOUDEMIRE: Yes. That's stated in terms of franchises.

MR. SINKLER: No, he's talking about Section 6 of Article VIII.

MR. WALSH: I thing we ought to make sure that that gets back in the Constitution.

MR. WORKMAN: Did we not, under the Legislative Section, include the prohibition against special laws and detail that the General Assembly shall not enact local or special laws concerning any of the following---

MR. STOUDEMIRE: We took all that out except schools and game laws. Just got a general statement that no special laws would be passed where a general one would do.

MR. WORKMAN: Is it your feeling that that would eliminate the necessity for this?

MR. STOUDEMIRE: I just think say "plenary power of the Legislature" will do.

MR. WORKMAN: We have already flatly forbidden the use of special laws where general laws would be applicable. Didn't we do that in the general language?

MR. SINKLER: Yes. We may have to change that to say "except where provided elsewhere in this Constitution".

MR. STOUDEMIRE: For instance, take the old thing. I'm not sure it's wise to say constitutionally that business licenses must be graduated. This is a great inconvenience to little towns. Well, he doesn't require it here. He just says "authorize".

MR. WORKMAN: I think this business of municipal revenues that concerns Emmet so much (I think it ought to concern all of us) and I cite the case in Atlanta where the General Assembly of Georgia authorized the City of Atlanta to enact a sales tax. Atlanta vetoed it, but should be forever forbid a municipality from imposing a local income tax or a local sales tax? Should that not be left up to the decision within that jurisdiction?

MR. McLENDON: I don't know, Bill.

MR. WORKMAN: Well, I'm asking because the municipality---

MR. WALSH: How are municipalities going to live?

MR. McLENDON: I think the State ought to kick back part of the income tax and part of its own revenues.

MR. WALSH: You put a provision in there that revenues sent back to local governments shall be equitably distributed between local governments, then that would be fine. ///

MR. STOUDEMIRE: My thinking is, gentlemen, is that we have not itemized in all of our earlier sessions. If we do this thing---all right we'll do it backwards. Number 7. Eminent domain. We have a constitutional provision on this now. Now we still haven't got urban renewal part of it. We adopted the basic principle of private property with the understanding that we would later work out how we would work this into urban renewal if I'm right on that.

MR. WORKMAN: Yes. What have we done on taxes? Did we disregard it? Is it the general feeling that we want to slam the door on any opportunity for municipalities to move into the area of taxation picture? I mean sales or---

MR. WEST: No.

MR. SINKLER: You don't preclude that at all.

MR. STOUDEMIRE: Your 1895 Constitution on taxes has a restriction that "the General Assembly shall by law restrict the right of towns", you see, is the old language. If you strike that, then the General Assembly has the right to restrict or not restrict, as I see it. Now, classes of property---under our property tax section we have agreed that all property be assessed alike. One thing might be of importance in this Constitution, though. This thing that gives the town the right to regulate the franchise. 4, I believe. "No law shall be passed by the General Assembly granting the right to construct and operate a street or other railway, telegraph, telephone or electric plant, or to erect water or gas works for public uses or to lay mains for any purpose, without first obtaining the consent of the local authorities in control of the streets" and so on and I think this has been interpreted that this gives the City of Columbia the right to control the franchise of S. C. Gas and Electric coming to town and I think it was used about two years ago in some legislative fight.

MR. WALSH: I believe you're going to have to be sure that that gets in.

MR. WORKMAN: It's in now, isn't it?

MR. WALSH: It's in the Constitution now.

MR. STOUDEMIRE: Chester, do you have any particular argument for including these?

DR. BAIN: No. The only thing that I felt that since you are moving into a general law provision on the powers of the cities and no longer will there be any such thing as a city charter that this might be a case where you want to spell out that the general law provisions would clearly take care of some things that would normally be taken care of in the charter.

MR. STOUDEMIRE: I think all of these things have been taken care of under our 1896 laws. They are already on the books.

MR. SINKLER: We have overlooked this provision in Section 4. In other words, without that power, S. C. Electric and Gas could be allowed to install mains, gas mains in the streets of the City of Columbia. That was put in there to let the City say, "all right you can do it, but if you do it you have to restore these streets."

MR. WORKMAN: Where does that show now?

MR. STOUDEMIRE: Section 4. I'm inclined to think perhaps it ought to go back in with the same wording.

MR. SINKLER: To understand 5 of VIII, you have to go back and read the minutes of the Constitutional Convention and read the News and Courier", but I don't think we need it because I think we can spell out somewhere in our preamble that this is a limitation.

MR. WEST: Let's push on. The question immediately here, as I see it, do we want to delete on page 34 "Such laws shall include" and the listing of them?

DR. BAIN: I think everything after the word "Constitution" should be deleted.

MR. SINKLER: Now, I do think we ought to go back---I want to pick up your thought about the county not being permitted to build water lines or sewer lines and tax the city. Do we put that there or do we put that under the limitations? X

MR. WALSH: That ought to go under limitations of counties.

MR. SINKLER: Do you want it under counties or do you want it under finance?

MR. WALSH: Haven't we approved finance already? We passed it over, said we're going to take it up in Local Government. I believe we agreed that we needed something like this somewhere.

MR. SINKLER: We don't have to have it in cities, but I do believe we need it on page 30 here. Didn't we discuss all that?

MR. STOUDEMIRE: We discussed all that and you delegated Robert to draft all that which he hasn't gotten around to.

MR. SINKLER: Bob, can't we affirmatively in the case of counties give them powers that are denied to them by Section 6 of Article X, but couple that with the limitation that we all want. In other words, if you put sewers in one section of a county, let the county go ahead and incur debt for that purpose, but let's require that that debt be paid primarily by those who get the benefit. X X

MR. STOUDEMIRE: Huger, we had a wording like that---in the original draft we made on Charleston, you remember?

MR. SINKLER: Years ago. See if you can't pull that thought out of what we had.

MR. WEST: We had worked out something.

MR. SINKLER: Weren't we unanimous on it. Let's go back to page 30 and adopt the subject to include those thoughts. X

MR. McLENDON: We had reached agreement on it. I think we left it for Bob to draft it.

MR. STOUDEMIRE: Let me refresh your memory. It won't take but a minute. "No law shall be enacted"---we had this as part of the debt provision originally. "No law shall be enacted permitting the incurring of Bonded Indebtedness by any County for sewerage disposal or treatment, fire protection, street lighting, garbage collection and disposal, water service or any other service or facility benefiting only a particular geographical section of the County unless the General Assembly shall prescribe that a special assessment, tax, or service charge in an amount designed to provide debt service on Bonded Indebtedness or Revenue Bonds incurred for such purposes shall be imposed upon the area or persons receiving the benefit therefrom."

MR. SINKLER: Let's stick that on page 30. Let's take that same thought. In other words, limit the type of laws they can pass by putting that in there.

MR. WEST: Everybody agreed on that?

MR. WALSH: That may need a lot of polishing up.

MR. STOUDEMIRE: Mr. Chairman, before we go, I want to clear up, to make sure that there is an understanding. The old Constitution required the legislature to restrict the powers to levy unto itself. Now, this would not be required and I assume that is what you--we would be willing to go along with that. The old Constitution specifically says, "The General Assembly shall restrict the powers of cities and towns to levy taxes" and so on.

MR. WEST: The thinking is, leave it to the General Assembly---

MR. SINKLER: Now, we've got uniform assessments. We can't go back to that situation before the 1895 Constitution where Darlington had its assessment. The County had its own assessment. Have we got that covered?

MR. WALSH: It may be that we need to put a positive statement on that.

MR. SINKLER: Single assessment program. No duplication of assessment functions between cities and counties.

MR. STOUDEMIRE: We require for a uniform assessment and I think we could very easily add one more sentence to that. That this main assessment--or however it's worded--back in the property tax section shall apply to all. Do we want to keep Section 4 of 1895.

MR. WEST: Does everybody agree that Section 4--"Street railway, etc-- No law shall be passed by the General Assembly granting the right to construct and operate a street or other railway, telegraph, telephone or electric plant, or to erect water or gas works for public uses or to lay mains for any purpose, without first obtaining the consent of the local authorities in control of the streets or public places proposed to be occupied for any such or like purposes." Everybody agree that should be incorporated?

MR. STOUDEMIRE: We'll work it in at the proper place. I think it might still come in Municipalities, but it might need to go in another Article, I don't know.

DR. BAIN: 35 and 36, we have the provision on home rule. This grant section is intended to grant home rule to certain cities and then certain restrictions upon what they may do.

MR. McLENDON: Aren't we going to get involved in the public's mind with confusion of the term "home rule" as opposed to this business of county council form of government? Is the word "home rule" absolutely necessary to be limited to this specific field? That terminology, "home rule" when you speak up it down in Chester and Marion County, they're going to talk about county government. Getting home rule back out of the General Assembly and we're going to get involved with the public misunderstanding the use of the term "home rule".

MR. SINKLER: As I understand it, we have eliminated home rule from counties.

MR. McLENDON: Yes, but the public thinks when we're talking about---

MR. STOUDEMIRE: Mac, speaking to your question. If you are going to give this device, I think you are going to have to use the term "home rule". This is the term going way back to Ohio many years ago. It is just the official language and there is no other.

MR. McLENDON: What particular words are we going to use when we are talking about local county government? Is that the terminology we use to distinguish---

MR. SINKLER: No, we killed so-called "home rule" for counties earlier. Now, I move to kill it for cities and go only--have general laws for both and then provide for the amalgamation, as you call it, of the two.

MR. WEST: We're getting to that now.

MR. SINKLER: I think we ought to decide whether we're going to adopt it before we---

MR. WEST: All right. "The General Assembly shall provide by general law one or more optional procedures by which a city with a population in excess of 75,000 according to an official census may select a charter commission for framing, publishing, and adopting a municipal charter or amendments thereto." Page 35. "Subject only to the restrictions set forth in this section and notwithstanding other provisions in this Constitution or in general law, any city so eligible shall have the power---" subject to the eight restrictions. "Such charter or charter amendments shall not become effective until approved by a majority of the qualified voters of the city voting thereon".

MR. SINKLER: I see no point in having it except to allow great confusion in administrative details. Unless you are going to have true home rule in the sense that the city is a unit and has no county in it.

MR. WALSH: I hesitate to see us say that we are not going to have no home rule for cities.

MR. SINKLER: You have home rule now. We're going to provide by general law---

MR. STOUDEMIRE: We have home rule, really, and this is the reason that I'd go ahead and make it official. You have home rule through the back door whereby the Spartanburg people draft up a new project for their government. The Spartanburg Delegation buys it, introduced under the guise of a general law and it becomes fact, you see, but it is at the mercy of the Delegation, really, and not at the citizens drawing it up.

MR. WALSH: Is there anything in all this material that would prevent the Delegation from saying that you can't hire or fire unless you have a wart on the left ear..

MR. STOUDEMIRE: "The General Assembly shall provide by general law one or more optional procedures by which a city"---or for whatever it might be worth I believe that--I think your Municipal Association--the people within the Association, your mayors and so on would take very pointed exception to the absence of a home rule provision and I feel sure that they would come back and ask for this in a public hearing.

MR. WEST: What's the objection to putting it in?

MR. SINKLER: I'm beginning to wonder. Frankly, the reason I wasn't in favor of putting it in was because I felt that the real idea of the situation was this city-county amalgamation and I didn't want to discourage that.

MR. STOUDEMIRE: You see, the thing I would argue for is---all right, all our towns now other than Charleston, I believe, over 10,000 have a county manager form of government. These things are somewhat haphazard. Most of them really could have a firmer and stronger base for this manager government if they had done like Aiken, really, and adopted this charter on their own.

MR. WORKMAN: You're talking about city manager.

MR. STOUDEMIRE: Yes. Where a lot of these others have really accepted a half loaf and in some of them you have a twilight zone--what is the power of the manager and so forth and if Spartanburg wants to let the manager appoint the police chief, o.k. They can think that the mayor and the council ought to---

MR. SINKLER: That's probably a pretty good idea.

MR. WALSH: Bob's got a real good point because for instance, although the people of the city adopted a council manager form of system by about 2½ to 1 and reaffirmed on another occasion 2 to 1, when the legislature got around to passing it, all they passed was one sentence because they said that was all the people voted for. But we have it and it's worked pretty good. They just said that the City of Spartanburg shall have a council-manager form of government. The manager to be elected by the city council, put up a bond of \$25,000. It does go further and say "provided however, this form of government shall in no way affect the power and authority of the board of public works.

MR. STOUDEMIRE: Now, this is a very significant point, really. Your home rule charter could merge your board of public works or maintain the sanctity of it as it now exists. If the people in the town vote to merge it, well, the people have spoken.

MR. WORKMAN: I think one thing that's troubling Mac, at least to a given degree, is the rather technical use of home rule in caps or quotes or whatever to distinguish a particular form of what we have been talking about as local self government, either at the county level or at the city level. Now, we're getting away from home rule technically so far as counties are concerned. We're thinking about home rule, technically, so far it's permitting there being a mechanism whereby municipalities can be governed.

MR. SINKLER: Well, if he's got problems with his legislative delegation, he's entitled to have this provision in there.

MISS LEVERETTE: What Bill was talking about, I have seen come up before where an interpretation of home rule by the layman was considered just local government, but I agree with Bob on this. That home rule is a technical term of art almost in that it means a certain thing and I think it should be defined somewhere---not in the Constitution, but in the annotation or something to show that it means a certain

thing. That it's not generic term for local government.

MR. WORKMAN: Well, we should within perhaps our preamble or letter of transmittal or something, put in there that reference to home rule---

MR. SINKLER: This doesn't use the language "home rule", does it?

DR. BAIN: Except in the heading.

MR. WALSH: Home rule here is really a word of art and designated a method of local government whereby the people through a designated procedure can establish the form of local government they want without reference to any other governmental body.

MISS LEVERETTE: If we don't stick with the use of that term, it's going to get awfully confusing.

MR. WORKMAN: Well, it's going to devolve on us in the press to get this idea across. Now, we've been talking about local self government. We will continue to. Somewhere along the line as it becomes a propitious moment to say that within the local self government which is being considered by the Committee is the proviso that one form known as home rule could be adopted by cities and---

MR. McLENDON: We're going to have to clarify this thing with the public. They're going to be terribly confused.

MR. WALSH: We're going to have to use home rule here like all the other states use home rule. Otherwise, we would run into a real problem.

MISS LEVERETTE: You start trying to distinguish it and use home rule as a general term, you really would---

MR. STOUDEMIRE: You could say in here "the General Assembly shall provide for home rule for municipalities". Say no more. And then somebody would bring a court---the General Assembly acted---would bring a court case and then our Supreme Court would go to this long line of stuff under that title to define---

MR. WORKMAN: We can move on. We will try to handle that as best we can.

MR. WEST: Are we in general agreement now that a home rule provision should be included for cities? All right, how about the exact wording on page 35, particularly the 75,000 criteria?

MR. SINKLER: That's too high.

MR. WEST: What should it be?

MR. SINKLER: What about 35,000?

MR. STOUDEMIRE: Let me throw this out to you. I'm thinking in terms of Orangeburg, Greenwood, Sumter and so on. In other words, what I'm thinking in terms of is a town the size of Greenwood upwards.

MR. WORKMAN: Sumter was the first in the country with the city manager type of government.

MISS LEVERETTE: I would like to hear Chester's comment on the need for--- what's behind the need for home rule, at just what point in your population that certain things come up that it might be useful?

DR. BAIN: This is a figure that I thought---I originally had 50,000, then I put 75,000. I wanted to say that to indicate that there's nothing sacred about it. The line of thinking I was using in trying to come up with a figure was this. That you ought to have a unit that is large enough, that is changing enough, that is creating problems that need to be taken care of from time to time and that you don't want to wait and delay and so on. And in a smaller unit, I don't think these things are changing as rapidly or are as extensive as they are in larger settlements. Partly, I am sure that I was influenced by the Virginia situation there. To give too much freedom and control to units of very small size has led to difficulties and problems and we have for years tried to push it up to a much higher level. So, after looking at the thing, made it 75,000---in England they had for a long time 50,000 and increased to 75,000 and then they raised it to 100,000 because they found that these units below this simply didn't need it and weren't using it and so after looking at this more in terms---not so much as what Bob was doing--what is the local situation because I don't know that as well as he does---I just said well, 75,000 seems to me to be a reasonable amount.

MR. WORKMAN: Only three in South Carolina that that would affect.

MR. RILEY: What is Florence?

MR. McLENDON: 27,000.

MR. STOUDEMIRE: On the other hand, I come back again to Aiken. I think Aiken, really, is the best example in South Carolina that where local citizens really got together and prepared what, in effect, is a home rule charter, but they had to use the legislative device to get it.

MISS LEVERETTE: I'm afraid that if you set it too low, you're going to be dealing with a group of cities that really don't know how to handle home rule.

MR. STOUDEMIRE: That is very definitely a point below which you cannot go, Sarah. What that point is---

MR. WEST: What about 25,000?

MR. WALSH: I wouldn't put it any lower than that, frankly.

MR. WORKMAN: Well, I would put it to 20,000 on the strength of communities the size of Sumter that has shown an ability to operate an effective municipal government.

MR. WEST: At the same time, they will have the benefits of the--- the point is, at what size does a city get large enough to have special problems that should give them the flexibility to make special rules.

MR. WORKMAN: Well, now, here again you come back to some of the considerations---somebody was mentioning that it was the fact of density is an element which does not always relate to total population. Sumter right now has got some problems with the annexation of an area which in terms of total population would be appreciable, but there are a lot of factors that Sumter is hitting what, by most standards, would be some big city problems in the sense of a right congested negro area that wants to come in. The city is not too happy to get them right now. They're citing these criteria of whether or not they can encompass this new area so Sumter, with an Air Base alongside, with a fluctuating population, has a lot of problems not common to cities of 20,000, yet they are faced with them. That's why I say that Sumter is, by virtue of circumstance, in a situation which ordinarily would not be expected of a city of 20,000.

MISS LEVERETTE: One or two cities and you might help them out--they eventually are going to get it, but look at these other cities that might not be in a position of handling it that Sumter is. I think you would create a greater problem having cities who didn't know how to handle it.

MR. WORKMAN: If we look in terms of specifics, we don't hit that situation. Sumter is 23,000?

MR. MELLETTE: (Representing Municipal Association) Sumter is 23,000. I think Florence is 27,000.

MISS LEVERETTE: The question in my mind is to accommodate a city that eventually would reach this point---

MR. WEST: Gentlemen, let's say 20 or 25,000 and ask the Municipal Association to comment on it.

MR. STOUDEMIRE: That's my feeling. At a hearing this would give them the opportunity to argue why it should be less.

MR. WEST: Let's say 25,000. //

MR. RILEY: I'm kinda' inclined to think that Greenville, Columbia, Charleston, Spartanburg, Anderson, anything less than cities of that size, is a definite difference as far as a home rule question is concerned.

MR. WEST: If that's agreeable, we'll say 25,000. Are the restrictions on page 36 generally---do you want us specifically to---

DR. BAIN: They should be looked at, sir, because whether there are some in there that should not be in there.

✓ MR. WEST: These are restrictions upn the home rule of cities. Let's take it one by one. I don't think anybody wants to argue about number one.

MR. WALSH: Before you get to number one, let me ask you this other question, Dr. Bain. You say "a charter so framed shall not contain any provision differing from this Constitution"---. Now, we passed over urban renewal. Under most of the charters, I think in a great number of them, if the people in that area vote to give--to have urban renewal in their charter they have it. Now, we have a provision in this Constitution that would prohibit that.

DR. BAIN: Sir, that's only on the following _____. You see that itemization of this 1 through 8 is the only thing that---

MR. WALSH: I see. In other words, you don't say anything on eminent domain, therefore they can do it. They can set up their own provision of eminent domain.

MR. STOUDEMIRE: If we're going to adopt an exception for urban renewal under eminent domain is a question still before the house.

MR. WALSH: This would enable us to---a city if they voted for it to---

DR. BAIN: For example, a city adopting a home rule charter could include therein a provision on urban renewal that are not possible under the present---

MR. WEST: All right, number 1. Any exception? "Election and suffrage requirements." "Maximum bonded indebtedness of governmental units." Any question on that. "Any tax or other revenue sources reserved exclusively for the use of the State government"

MR. STOUDEMIRE: Mr. Chairman, may I comment here just a minute because I think this is a point that is of particular interest to our observer: Would the interpretation of this sentence be such that the General Assembly, then, could---it would take action of the General Assembly---suppose a home rule town wanted to enact a sales tax?

MR. WEST: They couldn't do it unless the State statute provided that they could.

MR. WALSH: That's the heart of your whole home rule. If you're not going to give a little wider latitude on that---

MR. RILEY: How can the State come back and say that?

MR. WEST: No, the State could say that home rule cities may, or all municipalities may in their discretion enact a sales tax.

MR. WORKMAN: Could be enabling legislation that they could move into if they wanted. They would not be required to.

MR. STOUDEMIRE: I would think from what we're doing that the State could get by that "all home rule cities can adopt a sales tax" by law.

DR. BAIN: It need not reserve anything exclusively to the State.

MR. SINKLER: I don't think the Legislature has specifically---

MR. WEST: It may not have. I just made that statement, but the feeling in the General Assembly is that we have, but I think legally there's, perhaps, a question. I don't know.

MR. WORKMAN: I don't think the Constitution now would prohibit sales tax on the part of cities if it were done generally.

MR. STOUDEMIRE: I think now under our existing Constitution, the General Assembly would to specifically have to authorize the towns to have a sales tax. Now, here, what we are getting around to is, unless the General Assembly has said the sales tax is solely the fund for S. C. State government, then I reason here that some could put on one.

MR. WEST: I think if we adopted this, then the legislature would have to pass an act saying the sales tax is reserved to the State. If we didn't do it in the legislature, then the cities would be free to go ahead.

DR. BAIN: Then, in part, there's also the idea occasionally (I don't like it myself) but you still have the occasions of dedicated revenue.

A tax is levied for a specific purpose. Now, in a case like this you might want to provide that this is reserved exclusively for the State. Then that would withdraw that from the charter. A tax on that particular source would be held to that one specific purpose.

MR. WEST: All right, we agree, then, that that's o.k. Now, this is your problem, Emmet, "the readjustment of municipal boundaries or the merger of two or more incorporated municipalities".

MR. WALSH: Explain what you mean on that, Dr. Bain.

DR. BAIN: Again, this is to say that the home rule charter cannot do something in these areas in violation of the Constitution.

MR. WALSH: Could they do something different?

DR. BAIN: The intention here is that in this matter that the Constitution and the general law provisions on these two items should be handled by Constitution and by general law and not by home rule.

MR. WEST: In other words, a home rule city couldn't adopt their own method of annexation.

MR. WORKMAN: This would knock out that Greenville thing, for example.

MR. WALSH: I would kinda' like to see that thing left out. I'm not wedded to it or anything, but you actually would not have as viable method as you have now.

MR. SINKLER: If you took, left that out, your city of home rule could say we extend---if you gave them power to adjust their boundaries, then the City of Charleston could reach out and grab North Charleston without North Charleston having any word about it at all.

DR. BAIN: This is what happened in Texas with their home rule.

MR. STOUDEMIRE: John, I think that we either have to leave this in or somewhere make a definite statement that a home rule city "can". If you don't, we're going to be in chaos.

MR. WEST: Let's leave it in.

MR. WALSH: I don't have any strong feelings, but let's don't make it any worse than it is now.

MR. WEST: I don't think anybody disagrees with 6. Don't want to change the penalties for the violation of the laws.

MR. WALSH: What is a local law?

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MR. SINKLER: Well, presumably the General Assembly is going to have to say that traffic violations or something like this are subject to fines within certain limits. You don't want home rule cities to say a guy speeding can be stuck in jail for two years.

MR. WALSH: It seems to me local law could have a very differing interpretation in a number of instances.

MR. SINKLER: Well, "of its local laws, ordinances, rules and regulations". Of "its local laws, ordinances, rules and regulations".

MR. WORKMAN: The word "local" kind of throws me here because you're talking about the State.

MR. SINKLER: If you put "its" in there you don't need "local". "penalties and sanctions for the violation or transgression of its laws, ordinances, rules, and regulations".

MR. WEST: No, you don't want to restrict it because if you give them ordinance making power, you've got to give them the right to---

MR. STOUDEMIRE: Chester, are you saying that right now a municipality can't levy a fine over \$100.00?

DR. BAIN: I'm saying this. If the general law says that the maximum penalty for speeding or parking shall not exceed \$25.00, then the general law provision prevails. If there's nothing on it, then they can fix the penalties. This is to reserve to the State the general law provision the power to set maximum or minimum penalties and sanctions for the violation.

MR. RILEY: Couldn't you say, "State laws, rules and regulations pertaining"---

MR. SINKLER: He's got it worded properly.

MR. McLENDON: The language is correct.

DR. BAIN: You've got to go back and read in front of each one of these "No municipal charter so framed shall", read all of that before.

MR. SINKLER: That's exactly right. I still think "its laws, ordinances, rules and regulations".

MR. McLENDON: No, because you're talking about the State's laws, not the municipal laws.

MR. SINKLER: I'm trying to go to the city.

MR. McLENDON: This is applicable to State laws. Local laws that are passed by the State that are applicable on a local level. That what you mean.

MR. WORKMAN: "No municipal charter ----shall contain any provision differing from this Constitution or from general law requirements as to penalties and sanctions for the violation or transgression of local laws, rules, and regulations---". Now, the "local" throws me.

MR. SINKLER: Throws me, too, in that content because I'm reading exactly opposite from you and I was thinking that this is a limitation on the charter power which is what I thought it was and what you're trying to say is the charter shall not have the power to change the prevailing State law.

DR. BAIN: Does not a municipality have the power to issue ordinances?

MR. SINKLER: Yes.

DR. BAIN: Now, if the legislature fixes a maximum or a minimum penalty for the transgression of those ordinances---

MR. WEST: No, they don't, do they?

MR. McLENDON: Yes, they do. When you go into city court, half the time they have got you indicted under the State Code.

MR. RILEY: What is wrong with saying "State laws, rules and regulations pertaining to municipalities"?

DR. BAIN: Sir, we're concerned with the ordinances enacted by the municipalities.

MR. SINKLER: Don't I improve your language by taking out the word "local" and putting in there "of its laws, ordinances, rules and regulations" because "its ordinances" means the ordinances adopted by the charter.

DR. BAIN: What if the General Assembly passed a general law, it would not necessarily relate to this particular city. The general law would relate to all cities. It would be local law in the sense of relating to all units. If you changed the word to "its", then that would apply only to---

MR. McLENDON: What it had passed and not what the General Assembly had said.

MR. STOUDEMIRE: I'm wondering if we haven't got too much in there, if we can say it shorter.

MR. WORKMAN: We're talking about the administration of justice, aren't we?

MR. SINKLER: "Penalties and sanctions prescribed by State law".

MR. WEST: "Penalties and sanctions in excess of the maximum prescribed by State law" or by "general law". Wouldn't that do it?

MR. SINKLER: Of course, you've got "differing". I don't believe I like the style of that first sentence.

MISS LEVERETTE: Why don't you put "State" instead of "local". If you are talking about a general law, it's a State law.

MR. RILEY: That's right. I think "State's" proper instead of "local". Because you say "---Constitution or from general law"

MR. WEST: "Prescribed by general law".

DR. BAIN: Could we just delete the word "local". "Differing from general law requirements on the penalties and sanctions for the violation or transgression of laws, rules and regulations".

MISS LEVERETTE: I still think if you put "State" in there you'd cure everything without juggling this other stuff around. If you put "State" in there you are referring---it's got to be a general law.

MR. SINKLER: You leave open the question--I think you've got two thoughts in there that I believe you've got to cover. You don't want a home rule town repealing in part a State law which makes you pay a \$25.00 fine for speeding and, by the same token, you don't want them to pass ordinances or impose punishment in the areas where there is none.

MISS LEVERETTE: If it's a general law which is what is covered in here, it has got to be a State law---State law applicable to local---

MR. WEST: If you just said, "penalties and sanctions in excess of that prescribed by State law".

MR. McLENDON: A city cannot now pass an ordinance which is in violation of the State law.

MR. RILEY: But with this home rule they might.

MR. WEST: You've got to put that restriction on it.

MR. SINKLER: Why don't we start looking at the top. "No municipal charter so framed"

MR. WORKMAN: Let me figure up some words in there. Combine 6 and 7. "No municipal charter so framed shall contain any provision contrary to this Constitution or the general law with respect to the structure or an administration of justice". Well, it all boils down to deal with---exercise of police regulations, fines, violations---

MR. RILEY: I think that's administration.

MISS LEVERETTE: I think you have a question of interpretation there almost as serious as the one we have here now. Administration of justice doesn't always carry that connotation---

MR. RILEY: We're talking about the system. We're talking about the laws themselves. I don't see what's wrong with the Chairman's suggestion to clarify it and, frankly, it looks to me like we ought to leave off "rules and regulations".

MR. WORKMAN: We're all aiming in the same direction. Let's just suggest that there be some re-wording to try to accomplish this.

MR. WEST: I think we all agree. You could say "inconsistent with the maximum or minimum"---

MR. WORKMAN: Well, the reason I suggested "contrary" is to connote opposition or antagonism whereas "differing"---

MR. WEST: "Contrary" instead of "differing". Let's pass on.

MR. SINKLER: "this Constitution, that's vague as it can be because this is a part of the Constitution here.

MR. WEST: No. 8. "the structure and administration of any governmental service or function responsibility for which rests primarily with the State government."

DR. BAIN: Sir, the idea there was--for example, the Federal law or State law might require a certain type of structure of your Welfare Board or method of appointing, this is something that--responsibility rests primarily with the State government, but there are State-local relationships that we ought not to let home rule provisions interfere with.

MR. WORKMAN: Let me ask a question about a specific of the moment, this business of Health Department inspection of food service standards. How would this apply here?

MR. McLENDON: This would prevent this city from doing it.

MR. WORKMAN: The city could not impose higher or could it?

DR. BAIN: I think it could impose higher. It couldn't put minimums and I don't think it could get into penalties.

MR. STOUDEMIRE: Bill, the way I interpret this, based on your question and the decision might have to go to court and see if it's, based on this, whether a restaurant inspection be a State or a home rule function.

MR. RILEY: I wish we could find something better than "primarily".

MR. WORKMAN: Adverbs are as undesirable as adjectives.

MR. McLENDON: Just strike out "primarily"--"for which rests with the State".

MR. WEST: Sometimes you have a joint thing.

MR. WORKMAN: Welfare.

MR. SMOAK: It's an awfully loose end to this, isn't it?

MR. STOUDEMIRE: Marion, I'm thinking about water pollution, air pollution, all these things, you see. As I see it, this is your court.

MR. WALSH: How about number 8? I'm not satisfied with that myself. Now, whether I've got anything constructive today or whether anybody else has, I just don't know.

MR. WEST: I think we've gotten a drafting problem. You think you can give some more thought to that.

MR. WORKMAN: Is your quarrel with "primarily"?

MR. SMOAK: Maybe it ought to be a little stronger.

MR. WEST: Why don't we put it this way, "funded--more than 50% of the money which comes from sources outside of the home rule entity".

MR. STOUDEMIRE: No, no. You're thinking about a regulation that really doesn't involve any State money. A general law.

MR. WALSH: I'm not sure about what it includes.

MR. WEST: That's so vague to me.

MR. WORKMAN: Couldn't you say, "the responsibility which is by statute vested with the State government".

MR. WEST: Maybe I didn't make myself clear. What I'm talking about is if they aren't paying for the function or financing it, I don't think they ought to be able to change it.

MR. SMOAK: Suppose it's some regulatory function, however, that doesn't involve any funds except the hiring of two inspectors.

MR. WALSH: Yet it's highly essential that regulatory function be administered on a statewide issue.

MR. McLENDON: What's the harm in just eliminating it?

MR. WORKMAN: Well, I would certainly recommend against the use of financial definition, John, for the reason that cities are forbidden by law to acquire any other business taxes. Liquor stores, for example. They are charged with enforcement of protection which may grow out of it, but they are limited as to what regulation, but they might have some sort of local---

MR. SINKLER: Do you realize that this home rule, as written, would allow us to have open bars in Charleston?

MR. McLENDON: Doctor, where would this be a protection?

DR. BAIN: Again, I think the example I had in mind to illustrate this, was a requirement with respect to hiring of personnel for the welfare program, structuring of welfare boards, something of this type.

MR. WEST: We don't have a city welfare board, though. We have a county welfare board.

DR. BAIN: But if you give them home rule, you'd leave them completely free---

MR. WEST: The point is, though, if they put their own welfare program forward, I think they ought to have the right to run it. If they become a State agency, this wouldn't be applicable. They couldn't touch it. If they get recognized, as they probably could by the Federal government, they have got to make their board requirements consistent with the Federal laws or the Federal laws. I can't visualize---

MR. RILEY: John, this would be a problem under the merger situation where you have the whole county-metropolitan government. How did we handle it there?

MR. WEST: I can't get clear in my mind what sort of situation would give rise to the necessity for it.

MR. STOUDEMIRE: What is worrying me, are we protecting the State now or is it clear what the position of the State will be on statewide health laws, statewide highway laws, statewide whatever it might be which is broader than structure and administration, isn't it? In other words, what I'm sort of looking for is that home rule could not upset statewide _____ however this might be expressed I don't know.

MR. SINKLER: If you don't spell it out in this particular section, then they could do---they really could, local option---they could do a lot of things that the general law of the State forbids.

MR. WEST: I'm still fuzzy after thinking about this for some time.

MR. RILEY: You think that they could o.k. gambling.

MR. WEST: I don't know.

MR. SMOAK: Doesn't the problem in this thing arise from the fact that under your charter system of municipal government, you approach it the other way. You authorize certain things, certain areas in which they may legislate whereas this comes around through the back door and therefore if you do this, you have got to be inclusive enough to cover everything we want.

MR. SINKLER: You could have gambling, you could have race tracks--

MR. SMOAK: There must be 1800 if you really get at it, but the question is whether or not this item number 8 is broad enough to cover everything and yet limiting enough to do what you want it to do.

MR. WORKMAN: How much damage to the thought of this--what we're working at--would be done if we simply said "no municipal charter shall contain provisions contrary to the Constitution or general law".

MR. SMOAK: I think that's fine.

MR. WORKMAN: I don't think the itemization can be complete and make it, based on the---contrary to the Constitution or general law--there you have the situation arise that you have to measure in the light of the particulars and then perhaps getting into litigation---

MR. RILEY: All right, if you had a State building code and the city wanted to propose or have an ordinance or a more strict city building code, you think that would be consistent.

MR. SINKLER: You would have to protect yourself in the legislature because the legislature could provide that this is a minimum requirement, and it could grant the cities, either generally or home rule cities, powers to go further. I'm not kidding you. The way this thing's drawn now you could have race tracks and gambling and a few other things.

MR. STOUDEMIRE: Is this getting at it, gentlemen---"except as authorized by statute a local government shall not have power to impair the functions, powers or duties of the State or any agency thereof or any public authority"?

MR. SINKLER: I think you go back to what Marion suggested. Just make it, "no such charter shall do anything that shall violate any provision of the Constitution or any general law thereunto appertaining" or something like that.

MR. RILEY: Anybody think of any general law where that would cause a problem.

MR. SINKLER: It that's the case, you'd get at it in your general law. You reframe your general law so that they can do it. You leave the power in the legislature where it should be, but really under this thing I honestly believe you could legalize gambling.

MR. WALSH: Huger, if Myrtle Beach wanted gambling and they voted for it, what's wrong with it?

MR. WORKMAN: State law prohibits it.

MR. SINKLER: Well, then, the State law should be worded so that "except where cities of home rule shall otherwise provide, there shall be no gambling in South Carolina", but you've got to grant them the power under State law.

MR. WEST: Well, the Secretary has made the suggestion which I construe as a motion to get forward that we delete the itemization and say "no municipal charter so framed shall contain any provision contrary to the Constitution or the general law". That right?

MR. WORKMAN: That is my feeling except to ask the group whether or not we want to go to the extent of regulatory matters adopted by State agencies which carry in the Code, you know and have the force and effect of law. It's not the general law except by construction.

MR. WALSH: Mr. Chairman, I wondering about use of the word "differing".

MR. WEST: We said "contrary".

MR. STOUDEMIRE: I think I use the word "statewide application". In other words, that the Charleston home rule charter could not interfere with a general law of statewide application.

MR. WALSH: Let me ask you if this might work. "That no charter nor any ordinance passed pursuant to home rule shall be inconsistent with this Constitution or any general law passed by the General Assembly".

MR. SINKLER: I don't know what "inconsistent" means. I don't think anybody knows what that means. I think what you're going to say is "prohibited" by the Constitution.

MR. WEST: Or "infringing on any rights protected by this Constitution".

MISS LEVERETTE: I would still suggest this though I like Bill's proposal there. I feel that we might be overlooking something in the case of general law proposition that I would like for Bob or Dr. Bain to just kind of survey before we settle on this thing.

MR. SINKLER: What I want to make certain is, though, if we go to this home rule thing that the General Assembly could pass a general law with a proviso in it that would give to home rule cities the power in certain areas. For instance, the General Assembly wanted to provide that there would be no gambling in South Carolina provided that this provision may be interdicted by a provision of the home rule charter, it ought to be clear that it could do so.

MR. WORKMAN: That would be general law and I don't think there would be any conflict.

DR. BAIN: Somebody might argue. Suppose that the General Assembly refuses to exempt home rule cities.

MR. SINKLER: That's too bad. The General Assembly has got plenary power anyway.

MR. WALSH: Then we defeat the whole purpose of trying to give home rule and that is to say on matters purely local that affect only the people in Greenville, those people in Greenville ought to have the power to say how that's to be done unless it is in conflict with a general State law or the Constitution.

MR. WEST: I think we are not in disagreement, again, in principle, but in the verbiage so let's see if we can get on with the other principles and rely on the draftsmen. Let's go on to 37, Provisions for Metropolitan Areas.

MR. WALSH: There's one point that I mentioned, the question of eminent domain. As it is now, under our Constitution, neither the State nor the county nor any municipality or any public service district can condemn any property---. Most Constitutions, a lot of them, have a provision that, for instance, where you are going to take half of a lot on which there is a building, you can condemn that whole building and you get the whole land when actually it isn't going to take the whole thing.

MR. WEST: How do you allow that without giving too much authority to cities---

MR. WALSH: Here's the way it's done in Ohio. "Any municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement and may sell such excess with such restrictions as shall be appropriate to preserve the improvements made". The New York Constitution has what they call the remnant theory, that is, if you've got ten feet left you in actuality are paying the full value, you can get title for that ten feet and enable you to re-sell it to the adjoining landowner.

MR. WEST: I agree with the remnant theory. I don't agree with unrestricted right to---

MR. WALSH: I wouldn't ask for unrestricted right. The Highway Department has just run into it and they have just paid 100% of total value. You ought to be able to do. That's the general law, I think, in most states today.

MR. SMOAK: In other words, what you're concerned with is the right to dispose of these remnants of property. Is that it?

MR. WALSH: Yes.

MR. SMOAK: We don't have such a right such as that? No way that the State can dispose of it?

MR. WEST: They can dispose of it. They cannot acquire more than is actually needed. In other words, if the acquisition of a 100 foot right of way leaves a strip of property over on this side that is a part of the tract over here, a ten foot strip, they can't acquire that ten foot strip which, if they could, they could sell it to the adjacent landowner here.

MR. SMOAK: Well, doesn't this all shake down, though, in that you should have a trial in this matter. It's all wound up in the equities involved.

MR. WALSH: No, we've got a situation I know of right now. We've paid absolutely more than the building was worth and the people wind up with thirty feet.

MR. SMOAK: If I were on a jury and heard those facts, I'd take that into consideration.

MR. RILEY: The owner says this property is cut off and useless to me.

MR. SMOAK: But anybody knows that he's going to turn around and sell it to the next property owner or to somebody and get some money out of it.

MR. WALSH: They get full value and then they own that little piece and they hold up the next property owner, too.

MR. SMOAK: I really can't get excited over that.

MR. WEST: Have we passed over that or is there a place that you felt it should go?

MR. WALSH: Well, back over here we had the thing on eminent domain, but they took it all out. On page 35. We took the whole thing out.

MR. WORKMAN: The consideration that you bring up ought to be treated where we treat urban renewal phase of condemnation. Now or later.

MR. WEST: It does involve, essentially, the right to condemn for private use.

MR. RILEY: Mr. Chairman, just for consideration I've worked out what I would suggest on page 36. I think that if number 7 would read, "criminal law and penalties and sanctions for the violation or transgression thereof" and the rest of that be eliminated and then number 8 be eliminated.

MR. McLENDON: Let's let the draftsman take it under advisement.

MR. RILEY: What worries me about saying what you said is if you made it subject to everything in the general law or the Constitution, I think everything they did would be in violation. I don't think you can do that and have any such thing as home rule.

MR. WEST: "Provision for metropolitan areas." Now, we're getting into the density situation. "Notwithstanding any other provisions of this Constitution, any county with a density of population in excess of 100 inhabitants per square mile, as determined by an official census, may consolidate with the municipalities within its limits into a single unit of government. The General Assembly shall provide by law for a referendum on such consolidation upon request of the governing body of the county, the governing body of any municipality within the county, or ten per cent of the registered voters within the boundaries of the county. Such merger shall not take place unless approved by two-thirds of the qualified voters voting on the issue at an election held for that purpose, but such election shall not be held more frequently than one in five years in the same county."

MR. SINKLER: I am opposed to two-thirds.

MR. WALSH: I am, too. If you ever get a majority, you certainly ought to be able---

MR. WORKMAN: Except this. If you are able to negotiate such a relative bulky vote, which is what this really is, by only a majority, you've got a running fight on your hands to bring this thing into any sort of semblance of order. I don't think a one vote margin on something which is as upsetting as merger is, would give you much of a working majority.

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MISS LEVERETTE: When you're limiting it, too, to those voting on the issue, I think that two-thirds---

MR. SINKLER: We're going to have a vote in Charleston and the way our thing is set up, we have a constitutional amendment, which permits the submission of a charter and if the constitutional amendment passes, the charter can be adopted as a single election.

MR. WALSH: You have a requirement here that will put consolidation pretty well beyond the reach---

DR. BAIN: I put in two-thirds because I definitely did not want to give any single unit a veto---and therefore I thought if you take a two-thirds of all those that voted, not two-thirds of the residents, two-thirds of those voting on the issue, then that would overcome the strenuous objection. The failure to give a veto to a unit---

MR. WALSH: I think the problems are so great that we might as---

MR. WEST: Let's get down to specifics for a minute with some figures. Let's take Charleston, Greenville or Columbia. What's the voting population within the city and within the county. What I think we don't want is for the city to gobble up the area when the county didn't want it. Let's take the extreme situation where everybody in the city wanted to consolidate and everybody outside the city didn't. Would you have a situation where there is a majority in the city?

MR. SINKLER: Certainly not in Charleston.

MR. STOUDEMIRE: The City of Columbia, about 100,000. Richland County, 200,000. Now, Greenville, two-thirds live outside. Spartanburg about one-third.

MR. WEST: In other words, I don't think that you ought to have a situation where one can swallow up the other.

MR. SINKLER: I think it has got to be the governing body of the largest municipality therein.

MR. MELLETTE: (Representing Municipal Association) I wanted to ask this question. Eastover could get together with the County Council of Richland and call the election.

MR. SINKLER: The largest municipality. Why not just put a certain percentage of the registered voters.

MR. WEST: Could you say a majority of the municipal corporations in a county or ten per cent of the voters in a county?

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DR. BAIN: I was trying to open it wide open so that refusal of one way of one particular unit---

MR. WEST: But here's the thing, let's say you have a wild crowd in _____ who wanted to stir things up and they could force the county to the expense of an election, couldn't they?

MR. SINKLER: I think it ought to be on percentage of the registered voters. If you can't get a reasonable percent of the registered voters in favor of a thing like that you've got no business bringing it up.

MR. RILEY: That would also give you a little justification to reduce the two-thirds. If you require 10 per cent petition, then I think probably a majority or maybe 60 per cent or if you wanted it just above the one, 55 per cent or something like that.

MR. STOUDEMIRE: Would you buy "upon the request of the governing body of the county which represents the whole or a certain per cent of registered vote".

MR. WEST: I think that's a pretty good idea.

MR. STOUDEMIRE: The county governing body should represent the whole.

MR. WEST: They're elected from the city as well as the county.

MR. WALSH: That goes on the assumption they represent the people.

MR. STOUDEMIRE: Do we want 10 per cent of registered voters---10 per cent of registered voters is awfully hard to get.

MR. WEST: We could say 10 per cent of the voters who voted in the last---

MR. SMOAK: If you say registered voters---

MR. SINKLER: I don't think 10 per cent is hard.

MR. WALSH: Let's stick to a majority.

MR. WEST: Let's take it one by one. 100 inhabitants a square mile. Anybody question that?

MR. SMOAK: I question that. I was just wondering if that should be raised a little. In comparison of where we stand now, I think those figures are probably based on the last census. At present Aiken County has right now about 95,000 people. On this basis, when it reached 120,000, it would come under the provision of this section, 100 inhabitants per square mile. Of course, that would be considerably larger, too. The point is that I just can't believe that at the

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moment this county would be in any position to--there would be any need for this. I don't think the density---

MR. WORKMAN: It just permits you to do if you want, but it doesn't impose any obligation on you at all.

MR. WEST: Right. Let's look at the counties. Obviously, the three that would be most logical would be Greenville, Richland and Charleston. They have the highest density, so I think there's a direct relationship between the density and the need. If you get it right down---actually, Sumter, York and Florence are marginal.

MR. STOUDEMIRE: By the next census Aiken would conform to your 100 probably.

MR. WEST: But Aiken would be in a minimum situation. It might or it might not. Everybody agree to the 100 for the time being? All right, then the second question is, do we want to provide that "upon the request of the governing body of the county" and eliminate "the governing body of the municipality" because of the question of which municipality. //

MR. SINKLER: It might be construed to be all municipalities.

MR. WEST: Right. You can say "the governing bodies of a majority of the municipalities", but I'd rather leave that out and leave the 10 per cent in. You've got two ways to get an election. //

MR. RILEY: Then what does it say about the two-thirds?

MR. SINKLER: Majority.

MR. RILEY: 60 per cent. How does that strike everybody?

MR. McLENDON: We do everything by the majority. Why not let this control?

MR. RILEY: There is some advantage in, if it's virtually a tie---

MR. McLENDON: But if the governing body, Dick, of the county has approved it or 10 per cent and a whole majority---it looks to me like that's a lot of people. //

MR. WORKMAN: I have expectation that most initiative is going to have to come from within the city. That the governing board of the county may not be at all interested in this so you're going to have to get your 10 per cent up. The argument that the governing board of the county is for it, I don't think is necessarily true.

MR. STOUDEMIRE: I would base it on actual cases. I would argue for a majority because everywhere in Richland where it is about even seven, if you look at all these other counties, the majority lies outside of the central city.

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MR. WEST: To me, that's persuasive. //

MR. STOUDEMIRE: Anderson, 40; Charleston, 85; Florence, 30; Greenville, 30 per cent of 35; Richland, Spartanburg, Sumter, you see. Rock Hill.

MR. RILEY: O.K. Majority. //

MR. WALSH: I was just wondering if we are looking the practicalities square in the face. I think what Bill says is partly correct. That the initiative will generally come from the city for the simple reason that they are most acquainted with these highly needed services and the governing body of that city are the elected officials most acquainted and yet they are powerless to initiate any beginning procedure. Would there be any objection against the majority of the incorporated cities in the county?

MR. SINKLER: Yes. You'd get these little towns.

MR. STOUDEMIRE: Let me ask you this, practically. I believe that the best advertisement for it would be getting the layman out getting the ten per cent. I think it would be a good procedure.

MR. WALSH: You may be right.

MR. WEST: Because they would have to be briefed on the arguments.

MR. STOUDEMIRE: Now, John, you want to keep this. "Can't be held more than once in five years"?

MR. WALSH: That's pretty steep. Let me give you an example. We had an annexation election and it was defeated soundly and yet when it was defeated it was only then when the people began to realize what they didn't get and they got interested and in twelve months they came back with a petition and it was carried by almost two-thirds vote. If we had had this in, we would have had to wait another five years. //

MR. SINKLER: Two years.

MR. WEST: All right, let's go on. "Metropolitan Government, Organization and Powers". "Any metropolitan area which consolidates as a single unit of government shall have the power to adopt and to amend a charter in accordance with the provisions of Section _____" ---
Now, do we agree, in principle, though, that the same provisions ought to---

MR. STOUDEMIRE: This is back to municipal home rule?

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MR. WEST: Yes, that we ought to have the identical---

MR. WALSH: There is a question I want to ask back here on page 38. When you say---does this thing cover when you say, "consolidated municipalities--"does this cover all these special districts.

MR. SINKLER: No, I don't like that. I want it clear that where this is done that all special purpose districts and every other form of government goes out with the possible exception of schools.

MR. WALSH: I would second that motion.

MR. SINKLER: But this is not satisfactorily worded now, the way it is. It has got to specifically eliminate---

MR. WEST: What did you contemplate on that?

DR. BAIN: If the merger goes through of the ceunty and the municipality into a single unit of government, then it's under home rule provision, it can wipe out of any of these things.

MR. WORKMAN: No, but it's not automatically under home rule.

DR. BAIN: Well, it's got nothing else to operate if you consolidate. And don't proceed to the formation of the home rule provision, then you haven't---

MR. WALSH: This might be all right. I haven't got it clear in my mind that this effectively does that. I believe if you have metropolitan consolidated government they ought to run the whole shooting match.

MR. SINKLER: I think they have got to adopt their charter in the same election or they might have no government. Have a chaos. What you do is to make them take two steps. Tell the General Assembly to provide by law, the General Assembly could postpone the effective date of that until they had adopted a charter. I think you want to make it very clear that once you have got an amalgamation, I think you ought to wipe out everything (I'm not 100 per cent sold on schools).

MR. STOUDEMIRE: You see we can do this by "and to amend the charter and accomplish the provisions of Section _____ on municipal home rule for _____ and such charter shall supersede the governing authority of all special districts" and whatever else.

MR. SMOAK: Couldn't you create an awful administrative hiatus here?

MR. SINKLER: I'm assuming that the law the General Assembly would pass would provide that consolidation so voted shall not take effect until a charter has been adopted.

MR. RILEY: It would be voted in as approved and then one more step would be necessary, but it should be mandatory for them to do that.

MR. SINKLER: ---shall not take place until approved by a majority and a charter adopted pursuant to the next section of this Constitution.

MR. SMOAK: So, then if in one election or referendum, if they approve the consolidation, but defeated the charter which could happen.

MR. SINKLER: You would be where you were.

MR. WORKMAN: That's what I was bringing up, too. Whether there shall be two elections in one or whether the question of consolidation shall be accomplished and then, in a separate referendum, submit as to whether or not you will have home rule or some form which is contemplated under classes.

MR. SINKLER: I think we ought to leave that to the General Assembly. I think the General Assembly could provide that they could adopt a charter in the same election or they could adopt it---make them wait. There might be reasons for it.

MISS LEVERETTE: Is it conceivable that they wouldn't take advantage of the home rule?

MR. SINKLER: Well, it's conceivable that they could fight like the devil over who got elected to this part or whether you had county-wide elections or whether you had district-wide elections and all that sort of stuff. They might be all in favor of merger, but completely opposed on that part of it and they might end up with nothing. So you can't let them merge until they have effectively adopted a charter.

MR. SMOAK: Huger, now all the way through this thing we are authorizing the General Assembly to classify and so and define forms of government. Maybe they ought to do it in this case, too.

MR. SINKLER: I think a merger is a new and a proper thing in the Constitution. I don't think a merger means a thing except government on top of government unless you spell out in the Constitution that you wipe out everything. There have been several approaches to this so-called "metro". The worst example of all being Miami, Florida. All you've got in Miami is layer upon layer of government. I don't want this thing in the Constitution unless you wipe out everything. I'm open on the schools.

MR. WEST: Let's first on page 38 say, "may consolidate with the municipalities and other political subdivisions within its limits".

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MR. SINKLER: Let's put "may consolidate with all municipalities and other political subdivisions".

MR. STOUDEMIRE: If you leave it like you've got it, it may take care of your schools.

MR. WORKMAN: Let me ask some factual questions with respect to Nashville and Davidson County. At one stage of the game, didn't they merge the city and county less a few municipalities that wanted to stay out?

MR. STOUDEMIRE: They allowed them to continue to exist.

MR. WORKMAN: What you had was a county-city merger with---

MR. STOUDEMIRE: They allowed them to exist for certain restricted local purposes, but they had to pay the tax, county tax.

MR. WEST: Gentlemen, Emmet's got to leave us and I think before he goes we ought to think a little bit about our progress.

MR. STOUDEMIRE: We have two more working papers. Amendment and Revision Section of the Constitution and the Miscellaneous Section. First, we've got a little bit more today. There are some items in Article VIII that relate to police affairs which we have got to go over some time or other.

MR. RILEY: Would it be possible for us to meet down here maybe Wednesday afternoon to tie up loose ends?

MR. WEST: How about meeting at 2:30 on Wednesday afternoon? All right, we'll press on.

MR. SINKLER: How about my second idea on this page 38 that "Such merger shall not take place unless approved by a majority of qualified voters". Something in there "and a charter adopted pursuant to the next section " which goes in the Constitution. In other words, I want to make them adopt a charter before they can effect merger.

MR. SMOAK: Then, again, if they voted in the consolidation, but failed on the charter, they'd just have to come back again.

MR. SINKLER: In other words, if they haven't got sense enough to adopt a method of governing themselves they should not be allowed themselves.

MR. SMOAK: It could easily happen.

MR. SINKLER: You could have the charter adopted at the time of the consolidation..

DR. BAIN: You wouldn't preclude the possibility that this could be a package deal.

MR. SINKLER: Oh, no.

MR. WORKMAN: Should there not then be a second sentence to the middle paragraph. "The General Assembly shall provide by law for a referendum on such consolidation---". At the same time, the question as to the charter of the merged or consolidated government shall be determined with such alternatives as may be---.

MR. McLENDON: Aren't you going to make---I'm thinking of Charleston, you've got problems at one time---

MR. WEST: But aren't they so inter-related that you can't divide them? Actually, I wouldn't vote for a merger unless I knew what the charter was.

MR. SINKLER: I don't mind if you require the charter to be submitted and approved at the same election.

MR. WORKMAN: That's my point. Of course, in Charleston you had three ways. Plan A, plan B or leave it like it is. The critics would come up---referendum, shall merger or shall metro be effected for Richland County and all municipalities. That's question one. Yes or no. If merger is approved, what form of charter do you favor, home rule, Plan A, Plan B or however you want it so that out of it comes an affirmative vote on merger or not and a vote on what form of government will be put into effect.

MR. SINKLER: I think if you merge you've got to have home rule. The thought I would like to have is---I just want the charter adopted as a condition preceding merger, but I would like to have the charter voted on at the same time, but I don't want to make it mandatory that the charter be voted on at the same time.

MR. WEST: Why not?

MR. SINKLER: All right. Suits me.

MR. RILEY: The charter part of the election worries me, at the outset you are going to have to pre-judge a lot of political issues, all of which are going to pick up pockets of opposition.

✓ MR. McLENDON: Create opposition.

MR. RILEY: Where all you're doing, really, is setting up a group of representative people to draw a charter or to recommend a charter back to the people. Would a charter have to be subsequently voted on?

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MR. SINKLER: You'll have to vote on it subsequently. Under my theory---the way I had originally suggested it, but I don't want to preclude the single shot if you want it. The way had envisaged was, the merger shouldn't take effect until they voted for it and until they had afterwards adopted a charter. So, I really required two elections.

MR. RILEY: You mean the people would have to vote again for the charter.

MR. SINKLER: Yes. Because you ought not to have a merger unless you've got a charter.

MR. WEST: "The General Assembly shall provide by law for a referendum on such consolidation together with the charter under which the merged government shall operate upon the request of the governing body of the county, or ten per cent of the registered voters".

MR. SINKLER: Well, that means the General Assembly writes the charter.

MR. WEST: No, no. The framing shall be done and it shall be a part of the election. In other words, the question shall be, "Shall we consolidate and operate under this charter?"

MR. WORKMAN: Back where we're talking about the charter for home rule for municipalities, that provided that a charter, in effect, be drawn up presumably by the then existing municipality and submitted to the people. No such charter would be effective until approved by the voters and this situation over here---upon whom does the responsibility devolve for drawing up a charter?

MR. SINKLER: You can't have---unless you create a charter commission, there would be no responsibility to draw the charter until after the election.

MR. STOUDEMIRE: There you'll have to say, "The General Assembly shall provide by law for a referendum and the creation of a charter commission to prepare---"

MR. RILEY: "To prepare and present to the people for approval"

MR. WEST: "---will be done simultaneously with the referendum on the consolidation".

MR. SMOAK: No point in holding an election just to create a commission to draft a charter. The delegation can do that.

MR. WEST: If 10 per cent petition on the county government, then the General Assembly shall provide two things. The referendum and the charter commission to frame the charter to be submitted at one time.

MR. STOUDEMIRE: The referendum, by law, would be delayed until such time as a charter---might even be a year later to give the charter commission a chance to draft it.

MR. WORKMAN: And you think that the Legislature, then, by the statute which establishes--joint resolution which establishes the referendum would also make provision for the creation of a charter commission.

MR. STOUDEMIRE: We argued this out in Charleston, you see. We thought of putting in the Constitution a self-executing charter commission. Now, this sounds wonderful until you start writing and then it is just almost impossible.

MR. WORKMAN: That, then, would alter the wording on page 38 somewhat.

MR. SMOAK: Well, if there's some way to do this thing with one election, let's do it.

MR. WEST: I think that's what we are trying to do. Your charter commission created at the same time the 10 per cent or request is received and the charter will be submitted.

MR. WORKMAN: We have agreed now on one election. When the Legislature schedules a referendum, this will do it until such time the commission has prepared---

MR. SINKLER: If we do that, then we've got to eliminate this next thing. We have already made the adoption of the charter a prerequisite to metropolitan government so this page 39 comes out, doesn't it.

MISS LEVERETTE: Are you going to run into any problem on your population business and your home rule situation?

MR. SINKLER: And then you've got to protect the Charleston if it by any chance adopts this home rule charter ahead of time.

MR. WORKMAN: This brings up a question which I'm a little fuzzy on. As I interpret what you're concerned with, if you have a merger of a county and city wherein the density does not prevail, can they go ahead and effect home rule?

MISS LEVERETTE: This is assuming a charter and no other---home rule proposition---would you have a conflict there?

MR. WORKMAN: All right, home rule can be adopted by a municipality having a density---

MR. WEST: No, having 25,000 people. All right, let's see. Provision on cooperative agreements.

MR. SINKLER: Just a minute. You do need the portion of the proviso on page 39 relating, up to the amendment provision of the charter. Even though you've adopted a charter, you've got to be able to amend it afterwards. I think you'd say, "that any metropolitan area" which is a word you haven't used anywhere before, so I think what you're trying to say is "any county consolidated pursuant to the provisions of" whatever section we've just dealt with "shall have the power to amend to revise its charter in accordance with" whatever you want to do. You've adopted it and we're giving them the power to amend it now.

MR. WEST: "Amendments to the charter may be made by a majority vote".

MR. SINKLER: Just don't lose the amendment thought. I don't think you want to take the position that is implied at all. I think you want to spell out that they may afterwards amend it.

MR. WORKMAN: What would you require by way of---on the amendment? That would have to go to the people?

MR. SINKLER: Oh, sure.

MR. WORKMAN: Well, why not, then, when you say, "no municipal charter so framed---such charter or charter amendments" back on page 36. "Such charter or subsequent charter amendments shall not become effective until approved by a majority of the qualified voters" and let's think in terms of arrangement here.

DR. BAIN: I think we are going to find, sir, that after we readjust the home rule provision for certain cities, rather than the cross listing that we now have, it perhaps will be better to spell this out even if it means a little bit of repetition at this point.

MR. SINKLER: We have to make very clear that a home rule city can't veto mergers.

MR. STOUDEMIRE: I think that Chester's point is very well---that when you make metropolitan government, you are going against all of your law books and your Supreme Court cases. So therefore I think, even if it's repetitious, you need to very well establish in your Constitution that this is it because otherwise they may strike you down.

MR. RILEY: Then do we plan to refer back to those safeguards that are under municipalities?

DR. BAIN: Perhaps the best thing would be to bring them over even if there is some duplication.

MR. RILEY: Well, here, we're going to have a problem with number 8 when we get into the county and State operated agencies like the Health Department, Welfare Department and so forth.

DR. BAIN: It is my understanding that we are to take a look at this and there's a possibility that all eight of these may be eliminated.

MR. WORKMAN: Under the general conflict of the language.

MR. RILEY: I don't think that's right. If it is, that's fine, but if you're going to have to look, then you'd better take a look at number 8. Under the merger situation, your county does contribute to the Welfare Department and it's hard to control.

DR. BAIN: If they are listed and spelled out, then it may be feasible to cross index it, tie it back in with certain safeguards. If it's not listed, then I think we have to spell it out, again in detail.

MR. WEST: All right, let's go on to page 40.

MR. STOUDEMIRE: Page 41. The concept of Intergovernmental Agreements. Dr. Bain has given you several choices, but I think the heart of the thing is the Maryland draft on page 41.

MR. SINKLER: You know, that really doesn't change too much some very good decisions that we have got in this State. Going way back as far as the teens where they let the Town of Edgefield issue bonds to help out the school district. We've seen it where Charleston County bought the site for the Medical College. I don't think it's fair to put it in the law.

MR. WEST: Maryland's provision sounds pretty good. Anybody take any exception to it? It's rather far-reaching. It means that the city and the county, by agreement, could enter a common police force, common tax collections, common health---

MR. MELLETTE: (Representing Municipal Association) Would this take care of situations across State lines?

MR. WEST: We couldn't.

MR. WORKMAN: Well, you've got several Constitutions there which makes you go into interstate compact which requires an act of Congress to permit this reciprocity, but in here we're getting close to this COG idea, this Council of Governments, which all municipalities or county governing boards or whatever in a given area collaborate for achieving a regional goal. I think it's a right forward looking step.

MR. STOUDEMIRE: But, you see, the State of Georgia, the State of South Carolina, without compact, agree on many things and the thing that Dr. Bain and I were talking about was, can Aiken be permitted to cooperate with Augusta without a constitutional provision? Would

Would a constitutional provision do you any good? I don't know.

MR. SINKLER: Is that about the sewer system of North Augusta?

MR. STOUDEMIRE: Anything.

MR. SINKLER: I think probably we ought to have a little more statute authorizing cities to contract with other agencies, including agencies across the State lines.

MR. SMOAK: Is this that much of a problem because they're contracting for services. They do it right now in some regards.

MR. WORKMAN: Now, let me read to you from the United States Constitution. "No State shall, without the consent of Congress enter into any agreement or compact with another State."

MR. SINKLER: "State" there probably means State and any State agency.

MR. WORKMAN: This is the essence of the Southern Regional Education Board and the others compact which set up the interchange of veterinary students under SREB and all these others and when they have to go back and clear the way---the Southern Nuclear Compact had to be established by the same Congressional authority for the states to enter into agreement with one another. So far as I know there has not been much objection in Congress. SREB was the first of the lot. Now, you've got a western equivalent. There's a whole book on intergovernmental compacts, regional compacts administered by any governmental agency. If we try to jump the State line, we've got to get Congressional support to do it.

MISS LEVERETTE: Now, Bill, this annotation under your provision in your Model Constitution says that the section" is designed to make sure that there are no State constitutional obstacles to cooperation between the state and its civil divisions, other states, the Federal government and foreign governments(if they happen to share problems...) The section cannot remove any other obstacles, such as, for instance, federal constitutional obstacles, which may exist to cooperation across state lines. Such obstacles may arise from the compact clause or from the federal government's exclusive power...". I think what they're doing in the Model Constitution is clearing the way and they know that they can't do anything other than that.

MR. WORKMAN: We ought not to put any obstructions in our Constitution which would prevent us moving in this cooperative area.

MR. SINKLER: If we limit this---I think you've got a point well taken---if we limit this to the State and to any other county, municipality, corporation or governmental unit of the State, then I think you might, by implication, get the idea that we could go out and---at least, you've raised a question that should be eliminated. Why don't we really say this, do it with the State or, where permitted by State law, with another state.

MR. WEST: Or government unit, which would include that.

MR. STOUDEMIRE: I'm thinking about adopting the Model Constitution language which authorizes this, but also authorizes going across the State line which, in effect, may not do you any good, but it can't do any harm. "Nothing in this Constitution shall be construed (1) to prohibit the cooperation of the government of this State with other governments, (2) the cooperation of the government of any county, city or other civil division with any one or more governments in administration of their functions and powers or the consolidation of existing civil divisions of the State".

MR. SINKLER: That still doesn't give the thought that the town of North Augusta and the City of Augusta---

MR. WORKMAN: This anticipates that if there is Congressional approval for such agreement, we can go ahead without any further constitutional action on our part.

MR. STOUDEMIRE: So much doesn't take Congressional approval, Bill. What's your compact unless there are political---

MR. WEST: Why doesn't the Maryland draft cover it? Let's read that thing. "A county, municipal corporation or other governmental unit may, except to the extent prohibited by law, agree with the State or with any other county, municipal corporation or governmental unit"---

MR. SINKLER:---of this State or adjoining states.

MR. WEST: Well, you don't have to say "of this State or adjoining". "Other governmental unit" means Federal government, State government or what have you.

MR. WORKMAN: I think the whole thrust of this is internal within the State.

MR. SINKLER: "governmental unit of this State or---

MR. McLENDON: "---any other State".

MR. WEST: "governmental unit of the Federal government" should we say?

MISS LEVERETTE: I don't see the objections to the Model, yet, Huger. You say it doesn't provide for what now?

MR. SINKLER: I think the word "governmental unit" there relates to governmental units created by the State of South Carolina.

MR. STOUDEMIRE: "Nothing in this Constitution shall be construed to prohibit the cooperation of the government of this State with other governments" is the way they have it.

MISS LEVERETTE: "or the cooperation of the government of any county, city or other civil divisions with any one or more other governments in administration of their functions".

MR. RILEY: What would be wrong with putting the paragraph in that Maryland has and then saying "provided however that nothing in this Constitution would prohibit" as the first sentence is read in the Model. Just add that to the Maryland one. I like the Maryland proviso, but then you could add that first sentence.

MR. WORKMAN: Read the first sentence.

MISS LEVERETTE: "Nothing in this Constitution shall be construed (1) to prohibit the cooperation of the government of this State with other governments".,.

MR. RILEY: You just say "provided, however, nothing in this Constitution shall be held to prohibit the cooperation of this State with other states".

MR. WORKMAN: "With the government" I'd say "of any other State or the United States".

MR. McLENDON: Well, that ought not to go in a section of the Constitution dealing with counties and municipal government of the State of South Carolina, should it? It needs to be somewhere else.

MR. RILEY: It would mean that this is not a limitation on that.

MR. SINKLER: I think it could go in this place because you're talking about intergovernmental relationship.

MR. McLENDON: You're talking about county and municipal government. You're talking about State government.

MR. STOUDEMIRE: You see, your State already has devices through compacts, reciprocal agreements or whatever it may be. I think that

Rock Hill and Jasper County communities and Milken County communities, Anderson, would be on surer constitutional ground if there was a provision of some type recognizing---you might want to say that the General Assembly can authorize---just let the General Assembly authorize cooperation with units of government in another state.

MR. WEST: I would rather leave it "except where prohibited". In other words, the General Assembly has the right to prohibit. Let's leave it open. Let's specifically authorize to agree with the states and with any other governments.

MR. WORKMAN: It's just a question of interpretation. I think that the whole pitch of this section out of the Maryland Constitution is aimed internally. We would have to add "including governments of adjoining states and the United States".

DR. BAIN: Wouldn't it be better to keep this section self-contained and add another section directed to this thing. They would be clearly separated. There would not be a court interpretation.

MR. STOUDEMIRE: Just prepare a section then on out of State cooperation. That the Constitution shall not be interpreted to prohibit.

MR. WORKMAN: We're going to come face to face with that in implementing this military agreement whereby troops from one state can be called into another state.

MR. WEST: All right, let's go on to the provision on Constitutional Construction. Can we do everything except what they say we can't or can we only do specifically what they say we can.

MR. STOUDEMIRE: Nothing local can be done unless the State authorizes. You're the creature of the State. Where do you go from there, Chester?

DR. BAIN: The court has interpreted that the power to act must be expressly---in other words, it's a narrow construction of the power. Now, most constitutions are moving in the direction of including a provision that would say to the court, now we want you to give a broad interpretation to the power granted herein and not a narrow, strict interpretation. On page 43, just before the section marked "Unresolved Issues" is suggested language.

MR. STOUDEMIRE: "The provisions of this Constitution and laws concerning local government units shall be liberally construed in their favor. Powers granted local government units by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution."

MR. SINKLER: I think that's a right good thing.

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MR. WEST: I like that.

MR. STOUDEMIRE: I think our language has been "local governmental subdivisions".

MR. WORKMAN: I have some reservations about possible diminution of State powers on this. When you start talking about implied powers, you can't imply hardly except in one direction. State government, the authority of the Legislature is supposed to be residual. If it hasn't been granted to the Federal government or delegated to the municipal or county government, it resides in the State. Now, here you're taking some of it out of the State, you imply it to local government.

MR. SINKLER: Well, I really don't think you're arguing about it too much. At the time of the depression many years ago the City of Charleston ---- rural aid bonds, West Virginia announced that they would put this plant in Charleston, but they had to get water so this guy conceived the idea of digging the tunnel in the _____. We still had to raise a million dollars for it and a very bright guy from Atlanta suggested---I can sell general obligation bonds additionally secured by a pledge of water revenues and it wasn't expressly in the law, but the court said it was fairly implied. The court is going to handle this thing however you do it.

MR. WORKMAN: Could well be because if push comes to shove, the Legislature can reassert the full authority.

MR. SINKLER: Of course they can.

MR. WEST: Let's leave it in.

MR. STOUDEMIRE: We do have some sections in 7 and 8 that have not been specifically set aside. The first one would be section 9 on page 12 of Working Paper 11.

MR. WORKMAN: Let me ask a question, Bob. We have provided for the classification of counties which allows them to move into an area of local self government. We have talked in terms of a home rule charter which in some cases would relate to a municipality or to a merger. Now, what are we going to do about other forms of local self government for counties in these first categories?

MR. STOUDEMIRE: Give me an illustration of what you mean.

MR. WORKMAN: Well, one of our main thrusts was to try to provide to insure to residents of various counties a form of local self government, other than home rule.

MR. STOUDEMIRE: You've got counties classified into five categories, remember.

MISS LEVERETTE: What Bill means is, are we going to provide---

MR. WORKMAN: Are we going to provide any mechanism of that government?

MISS LEVERETTE: Or leave it up to the General Assembly?

MR. STOUDEMIRE: We say, "the General Assembly shall".

MR. WORKMAN: O.K., but we're not going to address ourselves constitutionally to the method, or alternative methods of county government?

DR. BAIN: This does not do that.

MR. WORKMAN: I didn't want to make the misapprehension that we were providing some alternative methods of government. We are providing the means whereby the Legislature can do it.

MR. STOUDEMIRE: Section 9 says that "Each county shall constitute one election district, and shall be a body politic and corporate". We take the position that this is already covered in the Election Section. All right, over on the next page, Section 11. Townships and all that stuff.

MR. WEST: I don't think we need that.

MR. STOUDEMIRE: I don't think so. That's what we recommended, that it be deleted.

MR. WORKMAN: Now, we've got two townships operating in Charleston County. Does that affect that? Folly Beach and Sullivan's Island.

MR. STOUDEMIRE: I was just whispering to Chester here a while ago. We have not mentioned so-called special purpose districts and all these other things. They're not mentioned in the Constitution now and the General Assembly has authorized them, you see and I would go on the same argument that the General Assembly still would be free to set up townships, public service districts and anything else it might dream up in the future if it's not prohibited.

MR. SINKLER: Oh, no, I don't think so at all. My idea of county government would be to grant to these county governments the power to perform these local functions, subject to the limitations imposed by Emmet. That they've got to charge the area affected.

MR. STOUDEMIRE: Yes, but I don't think this necessarily prevents the General Assembly creating a public service district.

MR. SINKLER: I don't believe it does, but I think we should do it.

MR. STOUDEMIRE: I don't think you can stop all public service districts.

MR. SINKLER: I think you ought to always provide that the county can take over and do all these things.

MR. WEST: Let's see now. You're just trying to decide which ones we're definitely leaving out.

MR. STOUDEMIRE: We're back with 11 on Townships. We recommend you leave it out. All right, now 12, Saluda and Edgefield, that ought to take care of itself. Judicial and Congressional districts, I think is obsolete now. Now, we'd down to---Section 14 on page 15. No county line through city or town. I'm not so sure that that isn't a good idea. I don't know whether we can fit that in, Chester or not.

DR. BAIN: Well, we can add it. As I explain here, it seems to me like that the provisions permitting the General Assembly to settle controversies as to the location of the county lines, would be handled in that section.

MR. SMOAK: You still might end up with a county line splitting your---

MR. WEST: You could have a populous area petition for election with a county line going right between it and under this Section it couldn't be incorporated, right. In other words, "Hereafter no County lines shall be so established as to pass through any incorporated city or town of this State".

MR. WORKMAN: All in or all out. You couldn't have it like Kershaw.

MISS LEVERETTE: Couldn't you put that as a proviso to that section?

MR. WEST: Actually, the question is sort of academic in that you're not going to form new counties.

MR. RILEY: That's right. This wouldn't pertain to forming a new city.

MR. STOUDEMIRE: This is shifting the line, you see.

DR. BAIN: The shift comes up---they subsequently don't know whether--- a controversy on the line or they want to divide a part of it and join.

MR. STOUDEMIRE: You could shift, but you still could shift Spartanburg County--go right the middle of Greenville County, divide at Morgan Square in Spartanburg, couldn't you?

MR. SINKLER: Yes, you could under the way we've got it worded now.

DR. BAIN: You might want to do that sometime.

MR. WEST: I don't really think it's important.

MR. STOUDEMIRE: Now, Article VIII, I think we have taken care of Section 1. I think we've taken care of Section 2. Now, over on 3, I think we have already handled that one. Number 4 we are keeping in. That's on the franchise and so on. Waterworks and so on, I don't really think is constitutional. Section 5 on page 16. Section 6 does bring up some questions, maybe. "The corporate authorities of cities and towns in this State shall be vested with power to assess and collect taxes for corporate purposes, said taxes to be uniform in respect to persons and property within the jurisdiction of the body composing the same; "and so on.

MR. WORKMAN: That ought to conform in language to what we have determined on taxation generally. 11

MR. STOUDEMIRE: All right. "Taxes shall be levied on"---I may have to change this around and also add a statement that taxes levied---

MR. WORKMAN: Well, now, we get into this business that Huger's been concerned with and also Emmet. That where the tax burden could be differentiated in terms of services received, present and past---the retirement bonds for water service for a political subdivision which subsequently becomes a part of a larger one, the tax load in that area could be heavier because of its prior bonded indebtedness.

MR. SINKLER: The merged units have got to take all that.

MR. WORKMAN: Yes, but Emmet, I think, has been talking---I thought you were concerned about the fact that an inducement to merger would be some assurance on the part of those people who now are provided with a fee for their water supplies to be able to approve the merger of an area which does not now have water on the assurance that they're going to carry the bulk of the load and they won't come back again on the people who already have it.

MR. STOUDEMIRE: If you take it out which we have essentially done and we took out a while ago and not enumerating these things and this really puts it back to the General Assembly still would have the right to insist that they have a business license---they can graduate it or not graduate it. I'm not sure that a business license is a constitutional question.

MR. WORKMAN: No, I'm talking about property taxes. My recollection is that Emmet raised a right serious question about it---effort to let tax burdens presently existing---

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MR. SINKLER: Oh, that. I thought we covered that in a proviso to the Local Government provision. I think, however, it's necessary to say, "except as may result from the operation of" whatever section that is "corporate authority shall be wested, taxes shall be uniform". That's the thought you want to keep in there. I think it probably would be necessary to say or make it clear that the proviso that you are going to tack on to that old meeting we had a couple of years ago. Make it clear that this uniform provision is not in conflict with that, but I wasn't concerned so much with the--- It's really only going to be applicable to counties---

MR. STOUDEMIRE: I don't really see anything in 6 as long as you have a uniform assessment system.

MR. SINKLER: You may be right there. As long you've got that proviso.

MR. WORKMAN: We may have already fixed that.

MR. STOUDEMIRE: Gentlemen, we have taken care of. I am sorry to tell you 8, we have not. "Manufactories may be exempt from taxation". You recall back on the taxation section, we said "there shall be a uniform assessment of all taxes and nothing shall be exempt except"... We exempted---without looking it up I can't give you the exact language---but educational institutions and the old South Carolina standard exemptions. We did not make a special treatment for manufacturing at that time. As you know, this is a great hodge-podge of stuff in here. It starts off with municipalities, but, you see, your county provisions have been tacked on and it goes on and on. The general idea is that you can exempt taxes, except school taxes. The municipality has got to vote on it first, for manufacturing of varying amounts of capital invested.

MR. WEST: I think we ought to just put in a general provision that the General Assembly may exempt from all taxes except school taxes for manufacturing enterprises.

MR. STOUDEMIRE: The General Assembly can regulate it by law, not beyond five years.

MR. SINKLER: Let's put a five year limit. Let's don't let one county have ten years and another five and then get in competition.

MR. STOUDEMIRE: Then you would want me to add that "The General Assembly by law may provide for manufacturing exemptions, not beyond five, not to include schools" as part of the general property tax exemption back in Taxation. Now, number 9. Armed police force. "No armed police force or representatives of a detective agency shall ever be brought into this State for the suppression of domestic violence"---

MR. WEST: I think we ought to keep it.

MR. STOUDEMIRE: I assume we take this out.

MR. WORKMAN: Well, now, wait a minute. You have got here---I'm concerned with, not over the intent, but the feasibility of the current effort among the governors to provide for the exchange of National Guard troops in case of emergency. I have serious doubts as to the constitutionality of that. And this thing here, if we were, as the governors collectively are seeking to do, to arrange that South Carolina in case of domestic insurrection could call on troops from Georgia's National Guard, for example, rather than call on Federal troops. This says "nor shall any other armed or unarmed body of men be brought in for that purpose," that is, suppression of domestic violence, which looks to me as directly in conflict with what's being sought to be accomplished---

MR. WEST: Why don't we just eliminate it, then?

MR. STOUDEMIRE: I'm assuming that you want Governor McNair to be able to bring in National Guard.

MR. SMOAK: It says "upon application of the Executive of the State".

MR. WEST: That says, "as provided in the Constitution of the United States". You get into that question of whether you're in revolt or can't contain it or suppress it. Now, I don't really see any reason to keep it in here. Let's just eliminate it.

MR. STOUDEMIRE: "Boards of health; I think, should be eliminated. "It shall be the duty of the General Assembly to create Boards---". They're going to do that anyway.

MR. STOUDEMIRE: Can't we get rid of the others and come back to this Section 11 and not get tied up on this thing. We're coming right back to it. "Prize Fighting".

MR. WEST: Let's eliminate that.

MR. STOUDEMIRE: "Municipal ice plants".

MR. WEST: Eliminate it.

MR. STOUDEMIRE: Dick, anything about the corporate limits?

MR. WEST: We don't want Greenville in the Constitution. Let's eliminate that. ~~Will take time~~

MR. STOUDEMIRE: Then we're back to 11.

MR. WEST: I'll make this preliminary observation. While personally I might want to change it, I think that the climate being what it is with a recent referendum, that we would put our whole effort in jeopardy if we attempt to make any major changes in this provision. With that statement, I'm open to persuasion.

MR. SINKLER: I think it's hopeless. I'd like to see it changed, but I think you've just got to leave it in. If you dot an i or cross a t---. Unless you're going to do it intelligently, there's no sense in trying to touch up any part of it.

MR. STOUDEMIRE: It's my feeling that the liquor question really ought to be---in the event that you have a Constitutional Convention, it really would be nice if the liquor question could be handled independently ahead of the Convention because I think liquor would be to South Carolina what religion might have been to New York. And my personal feeling is that instead of having all the "no's" jam up on three questions, it be divided. Do it one at the time. Liquor store hours, open bars.

MR. WEST: This is something that has been passed on.

MR. SINKLER: It's got to stay like it is.

MR. WEST: So, we leave Section 11.

MR. STOUDEMIRE: We transfer to, but I don't know where yet.

MR. SINKLER: Let's vote on how we're going to submit it next time.

MR. WEST: I'd rather wait until we get the information because, frankly, I haven't decided.

MR. WORKMAN: Let me suggest that we've got that question to give us some concern as to method of submission and I think another thing that we ought to be thinking about is what are we going to ask this General Assembly to do in terms of, perhaps, offering a method of amendment, article by article or one shot or whatever and/or on the bonded indebtedness. Some changes that ought to be made this time. Local government.

The meeting was adjourned at 6:30 p.m.

W. D. Workman, Jr.
Secretary

Nettie L. Bryan
Recording Secretary