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MINUTES OF COMMITTEE MEETINGS

4-5 MAR. 1969
12 MAR. 1969

MINUTES

The Committee to Make a Study of the Constitution of South Carolina, 1895, held a public hearing on March 4, 1969 at 3:00 P.M. in the Senate Conference Room, State House, Columbia, South Carolina.

The following members of the Committee were present:

Senators -
- Richard W. Riley
- John C. Lindsay
- E. N. Zeigler
- John C. West, Lieutenant Governor

Representatives -
- J. Malcolm McLendon
- Robert L. McFadden

Governor's Appointees -
- T. Emmet Walsh
- Huger Sinkler
- W. D. Workman, Jr.
- Sarah Leverette

Staff Consultant -
- Robert H. Stoudemire

Appearing before the Committee on March 4, 1969:

- Municipal Association (William C. Ouzts)
- League of Women Voters (Mrs. Sherrod Bumgardner)
- Mr. G. E. Hinson
- S. C. College Council (Dr. Paul Hardin)
- Mr. G. S. Kester, Jr., Attorney at Law
- Mr. Sterling L. Smith
- Letter from Mr. David W. Robinson
- Letter from Mr. Neville Holcombe

CHAIRMAN: We are here today to hear any interested citizens on the proposed Draft Constitution which has been formulated to date by the Constitutional Study Revision Committee. We have scheduled first Mr. William Ouzts who is the Chairman of the Constitutional Revision Committee of the South Carolina Municipal Association.

(Mr. Ouzts statement to the Committee begins on page 2 of these Minutes)

STATEMENT
by the
MUNICIPAL ASSOCIATION OF SOUTH CAROLINA
to the
SOUTH CAROLINA CONSTITUTIONAL REVISION COMMITTEE
March 4, 1969

Lt. Governor West and members of the Constitutional Study Committee.

I am William C. Ouzts, Mayor Pro-Tem of Columbia, and the Municipal Association of South Carolina's liaison to the Constitutional Study Committee.

We appreciate the opportunity of appearing before you today in this public hearing.

We also want you to know we appreciate your asking our Association some time ago to appoint a liaison to meet with your Committee from time to time, to provide you with the views of municipal government officials in our state, with regard to Constitutional revision.

We commend you for the work you have done in behalf of our state and its citizens for many decades to come.

We also thank you for the excellent shape municipal government finds itself in, with regard to your recommendations on Constitutional revision.

The Municipal Association of South Carolina strongly endorses the work of the South Carolina Constitutional Revision Committee. We are pleased that two long years of tedious and detailed anaylsis of the Constitution of South Carolina of 1895 and the Constitutions and work of Revision Committees of States has resulted in the present proposed draft of a new Constitution. Now is the time when substantial revisions of

our present Constitution should be made in the interest of solving the problems of government in this fast developing age. The support of our Association is behind the Committee and the General Assembly of South Carolina as they study the proposed draft and consider proposed changes and amendments from time to time.

We submit some comments to you on the various sections of particular interest to municipalities of South Carolina. We want you to know that if any changes are suggested, it is not by way of criticism of the work of the Committee, but by way of conveying to you the thoughts and feelings of our member municipalities on the very urgent questions regarding local government confronting us today.

I. ARTICLE VI--FINANCE, TAXATION, BONDED INDEBTEDNESS

1. Section A. Property subject to taxation and assessment. We believe the recommended provisions which would require all real and personal property subject to taxation to be assessed uniformly throughout the state to be a sound provision. There have always been good arguments for not basing assessments on actual value or not assessing property uniformly. But, in these times, when all forms of local government are dependent upon each other and are competing with each other in an effort to solve their problems, when the State of South Carolina is increasingly brought closer together, we strongly support the conclusions of the Committee that assessments should be uniform throughout the State and that they should be based upon actual value.

II. ARTICLE VII--LOCAL GOVERNMENT

We believe the draft provisions are a great improvement over the almost lack of local government we have in South Carolina. Increasingly, areas of counties not formerly incorporated will need additional services not now permitted by our present Constitution. However, we would draw the Committee's attention to several items:

South Carolina, at the present time, has the most restrictive and, in many cases, unworkable annexation laws of any State in the Union. Its procedures simply do not take into account the natural growth of urban areas so that the services demanded and required of a thickly settled area can be provided on a satisfactory and reasonable basis. For that reason, we would request that consideration be given for eliminating doubt as to whether or not the General Assembly of South Carolina can enlarge the boundaries of a specific municipality by law.

Because counties were prohibited by the Constitution from providing many services demanded of modern urban areas, we have seen the prolific growth of service districts in South Carolina. Over the long term, many of the functions performed by the special service districts ought to be performed by the counties or the municipalities in their capacity as a general governmental unit.

We strongly recommend that consideration be given to a Constitutional prohibition against the creation of a special service district unless it is shown to the satisfaction of a Department of the State of South Carolina, a County Governing Body or a Court that generally no other organized governmental unit can provide the particular service.

1. Section L. Home Rule for incorporated municipalities. The recommendations of the Committee regarding Home Rule are thoroughly endorsed by us. We, nevertheless, request that consideration be given to permitting towns with a population of 10,000 or more to adopt Home Rule Charters.

In many states, any town, of whatever size, has the machinery available through statute or Constitution for Home Rule.

The present cut-off at 25,000 population would limit Home Rule to a very few municipalities in the State of South Carolina.

We believe that towns with 10,000 population or more have the mature and dedicated leadership which is one of the important ingredients in effective Home Rule. Such a change would mean that the following towns could have the option of adopting Home Rule.

Greenwood	-	21,042
Orangeburg	-	13,852
Georgetown	-	12,216
Gaffney	-	11,448
Aiken	-	11,243
North Augusta	-	10,348
Union	-	10,191

Without a change in the procedure, Home Rule would be limited at the present time to the following cities:

Columbia	-	114,878
Charleston	-	75,940
Greenville	-	66,188
Spartanburg	-	44,352
Anderson	-	41,316
Rock Hill	-	31,110
Florence	-	27,208
Sumter	-	26,066

2. Section M. Merger of governments in metropolitan counties. This is a very good section and we want to make favorable comment on it because this is an area in which progress needs to be made in South Carolina.

3. Section R. Local government provisions to be liberally construed. We particularly commend the Committee for this section as we feel the demanding roles of local government in the future will require a liberal interpretation by the Courts of its powers.

III. ARTICLE XI--EMINENT DOMAIN AND PUBLIC LANDS

1. Section E. Slum clearance as a public purpose. The Municipal Association is keenly aware of the pros and cons of urban renewal. However, we sincerely believe that the provisions of Section E would be entirely workable and any area in the State that wanted an urban renewal program could have a way of achieving it without special

amendments to the Constitution. If the municipality or county did not want such a program, we are confident that the representatives from those areas in the General Assembly would take cognizance of their wishes.

In this connection, however, we would merely say that if Section E is not enacted, particular care should be taken so that the towns now having urban renewal powers will retain all of the power and authority they now have under the present Constitution.

IV. ARTICLE XIV--AMENDMENT AND REVISION OF THE CONSTITUTION

We commend the Committee for adopting reasonable provisions whereby the Constitution can be amended when needed. In the past years, the compelling needs of urban areas have constituted one of the principal reasons for various amendments to the Constitution from time to time. Therefore, we feel that more flexibility in the amendment procedure would be helpful to all of the citizens in enabling their government to be more responsive to their requirements and needs.

CHAIRMAN: Thank you, Bill. You have given us a very clear and forthright statement of the views of the Municipal Association.

MR. OUZTS: We, again, want to commend the Committee for its wonderful work. I personally know of the many long and arduous and tedious hours that you have spent in compiling this wonderful report and we want you to know that we are behind you 100%.

CHAIRMAN: Certainly, we've had no more of a cooperative group than the Municipal Association and I'm sure I speak for all of the Committee when I thank you and tell you how grateful we are. We are delighted to have Mrs. John Sinders and Mrs. Sherrod Bumgardner of the League of Women Voters with us. The League of Women Voters attended many of our meetings and have contributed considerably in our working process.

(Statement of League of Women Voters by Mrs. Sherrod Bumgardner begins on page 8 of these Minutes.)

LEAGUE OF WOMEN VOTERS OF SOUTH CAROLINA
311 Spring Lake Road
Columbia, S. C.. 29206

March 4,1969

STATEMENT BEFORE THE COMMITTEE TO MAKE A STUDY OF THE CONSTITUTION OF SOUTH CAROLINA 1895 DURING PUBLIC HEARINGS ON THE COMMITTEE DRAFT, BY MRS. SHERROD L. BUMGARDNER, PRESIDENT OF THE LEAGUE OF WOMEN VOTERS OF SOUTH CAROLINA.

Lt. Governor West, Speaker Blatt, Members of the Committee:

I am Mrs. Sherrod L. Bumgardner of Columbia, S. C., President of the League of Women Voters of South Carolina, an organization attesting to the principle that it is the responsibility of all citizens to become informed and active participants in government. I come before you today, as the representative of over 700 members of the League in South Carolina to present our recommendations regarding revision of the Constitution of South Carolina.

We have reviewed the Committee Draft and we commend you for the fine work you have done in modernizing the Constitution and deleting statutory material.

A study of the Constitution was adopted in 1951 by the first Convention of the League of Women Voters of South Carolina. In 1952, all Leagues agreed that South Carolina needed a new Constitution. In 1967, all League members began a review of the Constitution. Today, I shall present our state-wide consensus positions resulting from this study and our comments on the Committee Draft.

ARTICLE II -- SUFFERAGE AND ELECTIONS, Section D - Residency

The League supports a shortened residency requirement of six months in the state, three months in the county, and one month in the precinct. Therefore, we endorse Section D of Article II of the Committee Draft which would establish shortened residency requirements identical to those favored by League members.

Further, we strongly support a 30-day minimum residency requirement for voters holding valid registration certifcates from other states to be able to register and vote in National Elections for the President and Vice-President of the United States.

A progressive state seeking to encourage industry, with the resultant influx of new residents, requires shortened residency requirements in order that an incresingly mobile population not lose the franchise, particularly in a Presidential election year.

ARTICLE II - SECTION F - Literacy Requirement

League members do not approve of a literacy requirement as a qualification for voting as retained in the Draft. We believe that literacy requirements for voter registration narrow the franchise and deprive the electorate of a fundamental right. We believe that the citizens

right to vote is a right and not a privilege and, as such, it should not be abridged by providing for restricting qualifications which could be administered in a discriminatory manner.

Even though we believe that compulsory school attendance will promote literacy in the future, we do feel that the ability to read or write is not a test as to wheter or not an elector is informed. This is the era of radio and TV communication providing information about candidates and issues to the voter. We question the assumption, (although we would surely hope that it were true,) that all literate citizens are informed voters, and conversely, that all illiterate citizens are uninformed. How many people decide how to cast their ballot by what they read? And surely, in our technological society, we have overcome the mechanics of one's inability to write.

By virtue of present provisions, which set up an alternative qualification for literacy, literacy has not historically been the only test of an informed electorate.

Art. II, Sec. 14 - Permanent Registration

ARTICLE II - SECTION J - Election Procedures

We support the inclusion of this new section, giving a mandate to the General Assembly to act to fulfill the electoral process. We testified before the Registration and Election Laws Committee last month that:

While recognizing the need for sufficient safegards to prevent fraud, the League supports the extension of the absentee ballot to all electors having reason for not voting in person. There should by criteria established by law to define valid reasons.

ARTICLE IV - SECTION C - ELECTION OF GOVERNOR AND SUCCESSION IN OFFICE

We support the provision that the Governor should be permitted to serve two four-year terms. This tenure would enable a Governor to implement programs and establish an effective structure of government.

ARTICLE III - SECTION Z - Comptroller General

ARTICLE IV - SECTION X - Other State Officers

ARTICLE XII - SECTION C - Adjutant General

ARTICLE VIII - SECTION B - Superintendent of Education

League members believe that the Governor should have the power of appointment of not only the Adjutant General as granted by the Draft, but also the power of appointment of all of the following State Officers: Secretary of State, Treasurer, Comptroller General, Attorney General, Adjutant General and Superintendent of Education. Such power of appointment should be subject to legislative approval.

Policy making offices should be filled by selection of the electorate. These officers in turn select administrators to implement policy and can be held responsible for such selections.

The State Officers listed above are generally regarded as non-policy making; therefore we feel that they should be appointive. The policy-makers should be chosen by the people, not the administrators. Administrative positions should be filled by professionally qualified people. Many well qualified men would accept appointment who would not consider offering for election to the position.

ARTICLE V - SECTION A - Unified Judicial System

We strongly support the proposal for a unified court system which es embodied in the Committee Draft. Such a system would provide a more efficient structure for the administration of justice.

While we recognize that the initial cost of a unified system probably would be greater, it is logical that, in the long run, it would be more economical because of the flexibility achieved. Furthe the court system would be operated more efficiently under administrative supervision.

ARTICLE V - SECTION I - Selection of Judges

The League opposes retaining in the Draft the section that allows the election of Supreme Court Justices and Circuit Court Judges by the General Assembly. It is felt that this procedure violates the constitutional principle of separation of the powers of governments. Art. I, Sec. H

The present system of legislative selection has, as a practical matter, resulted in selection from legislative members. This is not to say that members of the General Assembly lack qualifications for the judiciary, but the source for selection of members of the judiciary is considerably narrowed.

Although the League supports no specific alternative method, it is suggested that some form of nomination by commission, structured so as to protect the system from partisan politics, would be preferred over the present method.

ARTICLE VII - LOCAL GOVERNMENT

We are in agreement with the Committee Draft that the Constitution should contain provisions for the establishment of county government. We approve the Committee's proposal that the General Assembly be directed to provide by general law foe the form or forms of government.. Inclusion of the specific forms of county government in the Constitution would make the document inflexible and lengthy, necessitating constant amending. Though the League supports the extension of permissive home rule to counties qualifying under the

proposed constitutional provision. We question the limitation of home rule to these counties only.

In keeping with the establishment of county government structure as proposed in the Draft Constitution, we commend the committee for broadening powers of county government, particularly in the areas of taxation and bonded debt. We congratulate you foresightedness in adapting the powers to meet present demands and changing needs.

ARTICLE XI - SECTION E - Eminent Domain

League members are deeply concerned about the growth of slum areas in our cities and with the inability of the cities to restore these areas due to inadequate public funds and presently existing restrictions limiting the use of eminent domain in urban renewal projects..

The League feels that modern methods are needed to cope with modern conditions. Therefore, we support Article XI, Section E, of the Committee Draft which would permit the use of eminent domain to acquire privately-owned property and the subsequent sale or disposition of such property to private enterprise in the undertaking and carrying out of slum clearance and redevelopment in areas which are predominently slum or blighted. However, the League's position is conditional upon the inclusion of a provision which would provide that laws be promulgated by the General Assembly to regulate the use, ownership, management and control of property so acquired.

We feel that these safeguards are necessary, since such an extension of eminent domain is a limitation on the constitutional protections extended to individual ownership of property under the Bill of Rights.

ARTICLE XIV - AMENDMENT AND REVISION OF THE CONSTITUTION

The League of Women Voters of South Carolina supports the concept of article-by-article revision of the Constitution; however, we believe that this procedure should not be limited to the 1970 and 1972 general elections.

Members support the removal of the requirement that constitutional amendments be returned to the General Assembly for ratification after approval by the electorate.

The Committee Draft of Section C, Constitutional Convention, is approved by the League. In addition, we feel that apportionment and allocation of delegates should be specified in the Constitution to assure fair and equal representation for all people.

The results of a Constitutional Convention should be voted upon by the people. Since a Constitution is a document for the people, ultimate approval or rejection belongs to the people.

We are surprised that there is no provision for Initiative or Referendum in the Committee Draft!!!!.....The people should have the

opportunity to initiate revision of the basic document under which they are governed, without need for intermediaries.

The League strongly recommends that this opportunity for participatory democracy be included in the Committee's proposal. Actually inclusion of Initiative and Referendum is giving the practical opportunity for action to the principle stated in Article I, Section A; "All political power is vested in and derived from the people only, therefore, they have the right at all times to modify their form of government"; or, as the Committee comments:---"the people have a fundamental right to revise their government....."

SUMMARY

The League of Women Voters of South Carolina has spent years studying the Constitution of our state and has worked periodically for its revision. We have come before you today as informed citizens whose primary interest is more effective state government for all South Carolinians. Let there be no misunderstanding ------ we basically support the draft of the Constitution you have proposed an will work for its adoption. However, we feel that the recommendations that we have made today have merit and should be given consideration by your committee before your final draft is presented to the General Assembly.

We acknowledge the work of this committee as evidence of the fact that the leaders of South Carolina are willing to consider change. Again may we commend you for your foresight and we pledge our vigorous support as we work together through the democratic process for the adoption of a revised constitution for South Carolina.

CHAIRMAN: Thank you, Mrs. Bumgardner. Mr. Hinson, we would be delighted to hear you now.

(Statement of Mr. G. E. Hinson, First Baptist Church, Andrews, S. C. follows on page 13.)

STATEMENT

The South Carolina Baptist Committee on Religious Liberty, a voluntary group of ministers and laymen affiliated with Baptist churches in South Carolina, has given serious consideration to the "Statement from the South Carolina Association of Independent Colleges" proposing a tuition equalization plan. We believe that the proposed legislation is a threat to the principle of the separation of Church and State and to the entire public school educational system.

No one can deny that the funds proposed for the tuition equalization plan are tax dollars. Tax dollars would be involved by indirection in the support of church schools. If the state were to approve such a plan on the college level (which would be contested and could possibly be declared unconstitutional insofar as church schools are concerned), the state would be opening the door for tax support of church related schools, kindergartens through high school.

In a free society the state is expected to provide laws for the existence of private and independent schools, but the state has no responsibility for their financial support. We cite two Supreme Court rulings with quotations from each. In commenting on aid to Catholic Parochial schools, Justice Jackson said in part: "...to render tax aid to its Church School is indistinguishable to me from rendering the same aid to the Church itself." (Everson v. Board of education, 330 U.S. 1, (1947).

Quoting Justice William O. Douglas: "Financing a church either in its strictly religious activities or in its other activities is equally unconstitutional, as I understand the Establishment Clause. Budgets for one activity may be technically separable from budgets for others. But the institution is an inseparable whole a living organism, which is strengthened in proselytizing when it is strengthened in any department by contributions from other than its own members...<u>What may not be done directly may not be done indirectly lest the Establishment Clause become a mockery.</u>" -Justice William O. Douglas, of the Supreme Court of the United States concurring in Alington v. Schempp, 1963. (underscoring added)

The South Carolina Baptist Committee on Religious Liberty believes that this proposed tuition equalization plan from tax sources would be in violation of state and federal constitutions which forbid the use of tax funds for sectarian schools. Article 11, Section 9 of the Constitution of the State of South Carolina reads: "PROPERTY OR CREDIT OF STATE SHALL NOT BENEFIT SECTARIAN INSTITUTIONS. The property or credit of the State of South Carolina, or of any county, city, town, township, school district, or other subdivision of the said State, or any public money, from whatever source derived, shall not, by gift, donation, loan, contract, appropriation, or otherwise, be used, directly or indirectly, in aid or maintenance of any college, school, hospital, orphan house, or other institution, society or organization, of whatever kind, which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization."

Furthermore, insofar as Baptists are concerned, we believe it would violate Article 8, Section 2 of the South Carolina Baptist Convention Constitution which says in part: "No funds, gifts, or allowances that infringe upon the historic principle of the Separation of Church and State shall be accepted by the Convention, the General Board, or any Institutions or agencies of the Convention."

CHAIRMAN : Thank you, Mr. Hinson. We certainly appreciate your taking the time and trouble to come. We now have the South Carolina College Council, Inc.

(Statement by Dr. Paul Hardin, President of Wofford College, for the South Carolina College Council, Inc. follows on page 15)

CONSTITUTIONAL REVISION COMMITTEE

Hearing on the Draft Constitution--4:00 p.m., Tuesday, March 4. Summary of comments of Paul Hardin, III, President of Wofford College.

Gentlemen,

Those of us who represent the South Carolina ~~Foundation of Independent Colleges~~ College Council Inc. are grateful for this opportunity to appear before your committee. We recognize that the task before you is a very large and important one. We have a special interest in one particular provision of the draft constitution, and we want to express just a few thoughts on that provision.

The provision in question reads as follows:

> Public funds for religious and private educational institutions. No money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution.

This proposed section is, of course, a liberalization of the present constitution in that it carefully does not prohibit indirect aid to independent or church-related colleges, ~~as for~~ [illegible]

On the other hand, we respectfully ask the committee to consider omitting altogether any prohibition of granting state funds for the benefit of religious or other private educational institutions.

We understand that the committee has evaluated this proposed section in conjunction with interpretations now being given to the "establishment of religion" clause in the federal constitution. As I read the opinions dealing with that clause of the federal constitution, they say to me that the federal government may not constitutionally grant funds to the schools supported by one particular religious denomination. On the other hand, it seems quite clear that grants in support of higher education--equally available to secular and all church-related institutions--are proper and constitutional. To cite but one example, Wofford College is now building a new library at a cost of 1.5 million dollars. We have received two federal grants on this project amounting to a total of approximately $800,000. We also receive scholarship assistance grants from the federal government, which we match with college funds for the benefit of students who cannot afford to pay for their own educations. Any college or university administrator could list dozens of federal programs that are available to church-related schools. There is no longer any doubt of their constitutionality under the federal constitution.

If the provision in question were omitted from the new state constitution, our General Assembly might still decide, as a matter of legislative policy, not to make direct grants of any sort to our church-related institutions. As a matter of fact, our colleges are not asking for any direct support. On the other hand, constitutions are inflexible and difficult to change. Circumstances can alter, and the time might come when our state would like to be in a position to grant direct aid to private schools. In our neighboring state of North Carolina, for example, the legislature is now considering direct grants to medical schools operated by two private universities--one Methodist-related and the other Baptist-related. If this is done, it will be because it is sound state policy. I should hate to see our legislature adopt a constitution which would prevent that kind of decision being made openly in the future.

One of the great strengths of higher education in South Carolina is our strong dual system. Our private schools now carry half the burden of educating our South Carolina young people, and they do so without any cost whatever to the taxpayers. It is obvious to everyone that this burden cannot be born indefinitely without financial assistance from the state government. We have already begun to consider the forms that state aid might take to help our independent colleges survive and yet not involve political interference in the management of our schools. There are many interesting models in other states. To place the entire burden of higher education on the public institutions is costly to the taxpayers and poor policy, because it forces every South Carolina student into a similar mold. We do not know whether or not it will ever be necessary for the state to make direct grants to private schools. On the other hand, we do know that such grants are being made by many other state governments, and we feel that our General Assembly should be free to follow whatever policy is sound at a given point in time. We respectfully submit that it would be most unfortunate to set up a rigid constitutional prohibition against direct aid to church-related institutions.

MR. McLENDON: Mr. Hardin, assuming that your argument is perfectly valid and maybe down the line we may reach that point, but you know this work is--taking into account the make-up of the State and its people and its past history, as a matter of expedience and judgment of getting this much done, do you not think it better for us to move as we have move, as we propose to move, rather than take the tremendous step that you seem to recommend to us?

DR. HARDEN: In my personal view, the step that I'm recommending isn't tremendous on its merits. Now, in terms of political expediency I certainly have to defer finally to the wisdom of this Committee and the Legislature of South Carolina. I have no choice and I'm inclined to do so anyway. I have a feeling that this thing can be sold, the thing that we're proposing. We have thought about the expediency angle. We have wondered whether to substitute for three or four words in this proposed clause another phrase. For example, to say "no money shall be paid from public funds nor shall the credit of the State or any of its political sub-divisions be used to support the teaching of religion at religious or other private educational institutions". I say that without any real conviction that this is particularly sound because we do know that taxpayers are supporting the teaching of religion at public institutions as an academic subject. I don't think anyone questions that that is sound, extremely valuable. So, I don't have my heart in that possible compromise. I am prepared to defend, on the merits, what I just suggested. That we leave this to the future judgment of the Legislature and not impose this rigid constitutional prohibition. On the other hand, if this Assembly feels that you have to do what you've done, we, of course, are in the position of at least being grateful for the fact that you are taking cognizance of the need and that you are being very careful not to stand in the way of indirect assistance in the form of scholarship grants. I hope that every member of the General Assembly will be alert, as I am sure that you are always alert to everything, to some things that look at first blush to be half loaves or satisfactory way-stations on the road to what we're after. For example, one very distinguished organization has proposed tuition equalization grants to commuting students only. This, it seems to us in the independent colleges, is folly. It's discriminatory in a serious way. It discriminates against young people in this State who don't live

close enough to commute to colleges or who don't have automobiles. It also, we think, jeopardizes the tremendous investment we have in our colleges and dormitory facilities. We think there are tremendous values in the residential college experience and we would hate to see the State, in effect, pay a premium to young people who live off campus and commute to college. Another thing that I want to just barely touch on is the suggestion that instead of a tuition equalization grant program we might have an across-the-board scholarship program for all young people in South Carolina, whether they attend public or private schools. Please remember, under our tuition equalization proposal, we're not asking for money to be paid directly into our colleges. I can assure you, for example, that Wofford College is going to remain in operation and going to receive tuition money from students. My concern, very honestly, is that right now we are getting that money from 70% of our students who reside in South Carolina. We think that South Carolina needs Wofford College and needs it available to approximately 70%. If the cost gap continues to grow and the pool of South Carolina young people who can and will pay that difference shrinks, then we will simply have to turn outside the State to fill our dormitories which we are determined to do because we're not going out of business. We expect to operate a very high quality institution. We're simply asking the Legislature to remove a discrimination that now exists in favor of students who choose State schools and are subsidized at approximately $1,000.00 a year and give a part of that subsidy, a part only, to those students who elect to attend independent colleges.

CHAIRMAN: Thank you Mr. Harden. We appreciate your coming. We are most appreciative of the work being done by private schools. I believe we are next scheduled to hear from Mr. Kester who is representing himself.

(Letter and statement of Mr. G. S. Kester, Jr., Attorney at Law, Columbia, S. C. follows on page 18)

March 4, 1969

MAR 3 1969

G. S. KESTER, JR.
ATTORNEY AT LAW
POST OFFICE BOX 812
COLUMBIA, S. C. 29202 Ph. AL 2-0146

Feb. 28, 1969

The Honorable John C. West
Lt.-Governor of South Carolina
P.O.Box 142
Columbia, S. C. 29202

Dear Mr. Lt.Governor:

Thank you for the draft copy of the proposed new state Constitution. Your Committee has done an extensive job, and I consider its members the outstanding experts in this field.

I note the March 4 and 5 dates for public hearings, and would like to be heard at the Committee's convenience. Due to time limits, I will merely outline my views, in part, here, and intend to support them from notes at the hearing. If desired, I can then prepare a further brief.

My main ideas are in legislative apportionment and in judicial selection. In the former, my suggestion is almost identical with my amicus curiae brief in the O'Shields v. McNair reapportionment case. It is to have a senate numbering 40 plus the number of congressional districts in the state, and 124 Representatives.

I would make the following allocations to the several election districts (presumably counties)(1) One senator at large for each congressional district.(2) One Senator for each whole one-fortieth of the states population. (3) One Representative for each whole one one-twenty-fourth of the states population, with one minimum to each county. Then combine each district's surplus Senate and House allocation fractions. (4) One senator allocated on the same basis as before for unsatisfied fractions, with the counties having the largest unsatisfied fractions to have any remaining Senate seats. (5) One Representative allocated on the same basis, with the counties having the largest unsatisfied fractions to have any remaining House Seats. Incidentally, the U. S. Supreme Court has in Burns v. Richardson, 384 U.S.73, and Maryland Comm. V. Tawes, 377 U.S. 84, and especially in Lucas V. 44th General Assembly,377 U.S. 713, encouraged the idea of correcting a malapportionment in one chamber by compensations in the other, making it easier to preserve county integrity as an election district.

In selection to fill judicial vacancies in the Supreme Court and Circuit Courts, I favor appointment by the Governor with the advice of a Judicial Commission consisting of the Chief Justice, Speaker of the House, President Pro Tem of the Senate, and the Executive Secretary of the state Bar (or other representative designated by said body); and with the consent of at least two of these four. In case of failure to reach agreement on this basis, interim appointment power could be vested in the Governor or the Chief Justice. At the end of each Judicial term, I suggest a popular non-opposed election by the people on whether the judge should continue in his appointment.

Yours respectfully,

G S Kester Jr

Grier S. Kester, Jr.

Suggestions Feb.4, 1969
On The Committee Draft
OF THE PROPOSED NEW CONSTITUTION OF SOUTH CAROLINA

by Grier S. Kester, Jr., Atty at Law; Box 812,Cola,S.C

I suggest the following, referring to articles of the Committee draft by roman numerals, and to sections by capitol letters:

In I (N), line 10, add the underscored words "courts inferior to or more limited than the Circuit Courts". Similar change in V (A). Judge Marcellus Whaley always argued that his county court was "limited but not inferior".

I (O) Line 4, "life inprisonment, or crimes which may lead to such charges", etc. Otherwise the victem of a felony may die after bail granted.

I (P); change to read "the General Assembly may (rather than shall) pass laws for the change of venue", etc. Judicial discretion may well be limited, but should not be superceded in this complex field.

II (G), change to "The General Assembly may (rather than "shall")etc". Or, change to "Disqualification for voting shall be by reason of mental incompetence, or conviction of felony (rather than "serious crime"), which disqualification shall be removable", etc. Common law as well as statute should be allowed to work this out.

II (H), change to "The General Assembly may (rather than "shall") etc.; or "Registration of voters shall be for periods not less than ten years"etc.

III, rather extensive changes as outlined in my letter to the Chairman. Also add to section H, "In the event the General Assembly does not perform such reapportionment, the Governor shall appoint a commission to perform this duty." The same provision should be made applicable to realignment or reapportionment of Congressional Districts when such changes are needed; then enforcement could be my mandamus in the state courts rather than litigation in the federal courts.

III(Z) Add a "grandfather clause" at the end, as follows: "provided, however, that the present incumbent of this office has the choice of re-election on an uncontested ballot until the office is vacant". It is suggested that this proviso also be put at the end of VIII (B), and XII (C) so that the State Superintendent of Education and the Adjutant General will also have the same choice.

Add a section III (DD) "The Senator at Large for each Congressional District shall cast a tie-breaking vote on any question any delegation in such District certifies to him as tied. Unless otherwise provided by statute or delegation vote, delegation chairman shall be the senior senator; or if the delegation has no senator, the chairman shall be the senior Representative. (Note: Changes in judicial selection outlined in my letter)

CHAIRMAN: Mr. Kester, you obviously have spent considerable time and effort in studying the draft and we're grateful to you for your appearance here and the suggestions that you've given us. We'll now hear Mr. Sterling Smith from Greenville. We're delighted to have you.

(Statement of Mr. Smith is included in letter addressed to Senator Richard W. Riley and follows on page 21 of these Minutes)

MINUTES

The Committee to Make a Study of the Constitution of South Carolina, 1895, held a second public hearing on March 5, 1969 at 3:00 p.m. in the Senate Conference Room, State House, Columbia, South Carolina.

The following members of the Committee were present:

Senators -
Richard W. Riley
John C. Lindsay
E. N. Zeigler

Representatives -
J. Malcolm McLendon
Robert L. McFadden

Governor's Appointees -
Sarah Leverette
W. D. Workman, Jr.

Staff Consultant -
Robert H. Stoudemire

Appearing before the Committee on March 5, 1969:

General Frank Pinckney, Adjutant General
Mr. James Dreher
Mr. J. K. Crowson, S. C. Highway Department
Mr. E. W. Brooks, S. C. Farm Bureau
Mr. L. S. James, S. C. Council on Human Relations

(The Vice Chairman of the Committee, Mr. McLendon, presided at the hearing on March 5th).

CHAIRMAN: We have no particular ground rules for those appearing. We have given you a schedule and we want to try to stay within it. General Pinckney, the Adjutant General has asked to be heard. General, we will hear from you now.

(General Pinckney's statement follows on page 2 of these Minutes)

GENTLEMEN:

I WOULD NOW LIKE TO REFER TO ARTICLE XII OF THE "DRAFT CONSTITUTION" PERTAINING TO THE MILITIA, WITH PARTICULAR REFERENCE TO SECTION C.

I AM IN FULL ACCORD WITH THE COMMITTEE'S RECOMMENDATION THAT THE GOVERNOR, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, SHALL APPOINT THE ADJUTANT GENERAL, BUT I DO NOT AGREE THAT THE TERM OF OFFICE SHALL BE COTERMINOUS WITH THAT OF THE GOVERNOR, AND I WANT TO TELL YOU WHY I TAKE THIS POSITION.

I HAVE BEEN ADJUTANT GENERAL FOR 10 YEARS NOW AND DURING THAT TIME I HAVE SEEN MANY ADJUTANTS GENERAL IN OTHER STATES COME AND GO EVERY TIME A NEW GOVERNOR TAKES OFFICE. IN SOME INSTANCES, BECAUSE OF THE FREQUENCY OF ELECTIONS IN SOME STATES, THE OFFICE CHANGED EVERY TWO YEARS. FURTHERMORE, I HAVE BEEN AMAZED TO LEARN OF THE LACK OF QUALIFICATIONS OF SOME SUCH APPOINTEES. ONE NEVER HAD A DAY OF MILITARY SERVICE; MANY WERE APPOINTED FROM OTHER SERVICES WITHOUT ANY KNOWLEDGE OR UNDERSTANDING OF THE NATIONAL GUARD; SOME WERE NOT PHYSICALLY QUALIFIED, AND OTHERS WERE OF VERY JUNIOR RANK, NOT QUALIFIED FOR PROMOTION, AND CONSEQUENTLY COULD NEVER BE FEDERALLY RECOGNIZED AS A GENERAL OFFICER -- ALL PURELY POLITICAL APPOINTMENTS. THIS IS WHAT I AM AFRAID COULD HAPPEN HERE, AND I WOULD HATE TO SEE IT HAPPEN, IF THE WORDING OF COTERMINOUS REMAINS IN YOUR DRAFT.

I WOULD ALSO LIKE TO POINT OUT THAT WHILE THE ADJUTANT GENERAL IS THE HEAD OF THE MILITARY DEPARTMENT OF THE STATE AND HIS DUTIES ARE PRESCRIBED IN THE MILITARY CODE, HIS MOST IMPORTANT RESPONSIBILITY IS THE ADMINISTRATION, TRAINING, SUPPLY AND COMMAND OF THE STATE'S NATIONAL GUARD. HE MUST HAVE THE KNOWLEDGE THAT COMES WITH EXPERIENCE AND TRAINING; THE MILITARY BACKGROUND THAT COMES WITH SERVICE; THE MILITARY EDUCATION AND FEDERAL QUALIFICATIONS FOR GENERAL OFFICER RANK IN ORDER TO BEST SERVE HIS STATE AND IT'S NATIONAL GUARD BECAUSE OF HIS RELATIONS AND CONSTANT CONTACTS WITH GENERAL OFFICERS AT ARMY, NATIONAL GUARD BUREAU AND HIGHER MILITARY COMMAND LEVELS. STATES THAT CONSTANTLY CHANGE ADJUTANTS GENERAL WITH EACH GOVERNOR, OR APPOINTEES THAT FAIL TO MEET THE QUALIFICATIONS I HAVE OUTLINED, ARE AT A DISTINCT DIS ADVANTAGE, AND MOST OFTEN THE GUARD SUFFERS MATERIALLY.

THE STATES WITH THE STRONGEST GUARD ARE THOSE WHERE THE ADJUTANTS GENERAL SERVE FOR LONG PERIODS OF TIME, AND ABOUT HALF OF THEM FALL IN THIS CATEGORY. WHILE THESE ADJUTANTS GENERAL ARE APPOINTED BY THEIR GOVERNORS THEY ARE APPOINTED FOR VARIOUS TERMS AND UNDER SPECIFIC CONDITIONS, AND CONSEQUENTLY SERVE SEVERAL GOVERNORS.

AS I STATED EARLIER MY SOLE INTEREST IS IN ASSURING THE CONTINUANCE OF A READY RESPONSIVE NATIONAL GUARD AS WE HAVE TODAY, AND I FEAR TO THINK WHAT COULD HAPPEN IN THE FUTURE IF EVERY GOVERNOR HAD THE POWER TO APPOINT A NEW ADJUTANT GENERAL.

I RECOGNIZE THAT THE COMMITTEE RECOMMENDS THAT THE QUALIFICATIONS FOR OFFICE BE REGULATED BY LAW, AND I THINK THIS IS AS IT SHOULD BE; SO I WOULD LIKE TO AGAIN RECOMMEND WHAT I HAVE PREVIOUSLY RECOMMENDED FOR INCORPORATION IN THE LAW, FOR THEN WITH THE CHANGES IN THE DRAFT CONSTITUTION I AM SUGGESTING THE LAW COULD BE CHANGED, IF NECESSARY, WITHOUT REVISING THE CONSTITUTION AT SOME LATER DATE.

I RECOMMEND THAT THE ADJUTANT GENERAL BE APPOINTED:

1. FROM ONE OF THE SENIOR OFFICERS OF THE NATIONAL GUARD. (TODAY WE HAVE TWO GENERALS AND 17 COLONELS, AND THIS WOULD NOT RESTRICT THE GOVERNOR'S SELECTION.)

2. THAT THE OFFICER APPOINTED, IF HE IS NOT PRESENTLY A GENERAL OFFICER, BE QUALIFIED AT TIME OF APPOINTMENT BY DEPARTMENT OF ARMY STANDARDS FOR FEDERAL RECOGNITION AS A GENERAL OFFICER.

3. THAT HE MEET THE PRESCRIBED PHYSICAL STANDARDS TO HOLD OFFICE. SHOULD HE AT ANY TIME FAIL TO PASS THE REQUIRED PHYSICAL EXAMINATION, THEN HE WOULD BE REQUIRED BY LAW TO RETIRE.

4. THAT HE SERVE ONLY UNTIL HE REACHES THE AGE OF 64 YEARS, UNLESS SOONER DISQUALIFIED, WHICH IS THE PRESCRIBED RETIREMENT AGE OF ADJUTANTS GENERAL.

5. THAT HE CAN BE REMOVED AT ANY TIME BY THE GOVERNOR FOR CAUSE.

A NUMBER OF STATES HAVE JUST SUCH GOVERNING LAWS, AND IT IS THEIR ADJUTANTS GENERAL THAT RECEIVE THE MOST CONSIDERATION; ACQUIRE THE GREATEST SUPPORT AND ACHIEVE THE MOST FAVORABLE RESULTS FOR THEIR NATIONAL GUARD. IN SOME STATES A COMMITTEE OF SENIOR OFFICERS THEMSELVES MAKE RECOMMENDATIONS, FROM WITHIN THEIR RANKS, TO THEIR GOVERNOR; IN OTHERS THE STATE NATIONAL GUARD ASSOCIATION MAKES SUCH RECOMMENDATIONS. EITHER OF THESE METHODS, OR WHAT I RECOMMEND, WOULD RESULT IN NOMINATING THE BEST QUALIFIED AND MOST ABLE REPRESENTATIVE FOR THE OFFICE.

I WOULD THEREFORE REQUEST THAT THE COMMITTEE DELETE ALL REFERENCE TO THE OFFICE OF ADJUTANT GENERAL BEING COTERMINOUS WITH THAT OF THE GOVERNOR AND SUBSTITUTE THE WORDING - "SHALL APPOINT THE ADJUTANT GENERAL WHOSE TERM OF OFFICE SHALL BE AS PRESCRIBED BY LAW" -- AND FURTHER REQUEST THAT YOU RECOMMEND THE LEGISLATION TO SUPPORT MY PROPOSAL.

CHAIRMAN: Mr. James Dreher is here from the Judicial Council, I believe.

MR. DREHER: I'm not speaking for the Council. I'm speaking only for myself.

CHAIRMAN: Mr. Dreher is an attorney in Columbia here and he is going to speak to some of the judicial problems. He is also a professor at the Law School.

MR. DREHER: With your permission, I would like to say a few words on my own behalf, about what may be a rather small point in the Judicial Article. I think the Committee has done an admirable job on the Judicial Article. It embodies many of the reforms that I had in mind when I was working for Mr. Robinson's Committee. At one time, I might have argued to have a complete integration into a state court system, but after seeing North Carolina's experience trying to do too much, I think the Committee was wise in taking this half-way stand. I do feel that if you bring the county courts into a uniform system, you have

mention was that in your Section which authorizes the Legislature to elect five additional circuit court judges, in addition to the sixteen primary circuit court judges--it just may be a matter of language, but it provides after the restriction, after the paragraph about the election of the sixteen it says that the additional, up to five, "...Judges shall be elected in the same manner and for the same term as provided in the preceding paragraph...except that residence in a particular county or Circuit shall not be a factor in determining qualifications". Now, that means that they can be elected from anywhere and would have to, if elected, move to and have their office in the circuit with the excessive work load. I have no quarrel with it and I frankly feel that would be the proper interpretation. I would be in favor having them additional, second circuit judges in the counties that have the heavy work load.

CHAIRMAN: We understand our draft to mean that they would be elected at large and would live where they are elected from. The House Judiciary Committee last week reported out a bill that the judges would be elected at large, but that they would have to then become residents of the circuit to which they were assigned for the overload. The House passed that.

MR. WORKMAN: Mr. Dreher, do I understand you to say that by inclusion within a unified system, down to and including, county courts would be not only desirable, but feasible as you view South Carolina.

MR. DREHER: Yes, sir. I think you have almost come to that when you require that the statutory framework be uniform throughout the State.

CHAIRMAN: Thank you, Mr. Dreher. We have with us from the Highway Department Mr. Kenneth Crowson. Mr. Crowson, we will be happy to hear from you or any of your associates.

(Mr. Crowson's statement follows on page 7 of these Minutes)

Statement by J. K. Crowson, Secretary-Treasurer, State Highway Department

Mr. Chairman and Members of the Committee:

I want to express to you our thanks for giving us this opportunity to appear before you to make suggestions concerning highway financing in the draft of the proposed revised Constitution.

Mr. Pearman has had to go to Washington on urgent business in connection with Federal highway legislation and he asked me to represent him here at this meeting. He also asked me to extend to you his best wishes and his regrets at not being able to be here.

In appearing at this hearing, I want to address my remarks to Article VI - Finance, Taxation, Bonded Indebtedness - and more specifically to Section E - Tax shall be levied in pursuance of law; and Section L - State may incur bonded indebtedness; without vote of electorate.

It would appear to my layman's eye that under the provisions of the present draft the revenue from the gasoline tax and automobile license fees could conceivably be earmarked by the Legislature for any non-highway purpose, as well as for highway purposes. I use the term "tax revenue" instead of "tax collections" intentionally. The highway is, in essence, a revenue producing facility - no less than a university dormitory which produces revenue from the charging of student fees.

We support, unequivocally, the provisions in the Constitution draft that all bonds should be general obligations of the State, regardless of the purpose of issue, but we ask you to consider at the same time a provision to provide that all gasoline tax revenue and motor vehicle and driver license fees, and all other such special imposts on highway use, be dedicated to highway purposes. Twenty-eight states now provide in their Constitution for highway use tax revenues to be used exclusively for highway purposes.

Highway use tax revenues - gasoline tax and license fees - have traditionally and historically been dedicated or pledged to highway purposes in South Carolina and this philosophy of taxation has been favorably received by the people of the State. It is a fair method of taxation; it is easily understood, and it is financially sound and a convenient way of collecting a use charge. The South Carolina plan, as it has been in operation for 40 years, could well have been the pilot project for the Federal Highway Trust Fund plan established by the Congress in 1956 to finance the construction of the Interstate System.

Statutory appropriation of highway use tax revenues for highway purposes is fine as long as there are no statutory inroads into these taxes for non-highway purposes, but you are well aware of past efforts to divert highway use tax revenues to non-highway purposes in times of tight State budget problems; and only because of outstanding highway bonds have such inroads been defeated. There are no highway bonds outstanding now against the gasoline tax and license fees and with the highway construction program being a continuing program, it is unwise to issue bonds except to provide funds for a workable coordination between construction expenditure requirements and tax collections.

We no longer operate upon the theory in vogue when the $65 Million Bond Act was passed in 1929 that the State would proceed with completion of the State Highway System and pay for it over the years. The "Ride Now, Pay Later" slogan - along with the other slogan - "Get the Farmer out of the Mud" - may have gotten the $65 Million Bond Act passed; but no one any longer thinks in terms of "completing" the highway system. We all know that it will never be completed, as such, as long as motor vehicle use continues to increase.

Two years ago the Highway Department made estimates of highway needs - 1965 to 1975 and 1975 to 1985 - and these estimates show our needs to be $3,474,590,000 for all highway purposes - construction, maintenance, law enforcement and administration - for this 20-year period which, incidentally, is some $500 million above the highway income in sight. (This assumes that the Federal-aid coming to the State from the Highway Trust Fund will not be reduced after 1972.) This estimate includes $2,243,990,000 for new construction; this $2-1/4 billion is about twice what we have spent on highway construction in South Carolina since the State Highway Department was created in 1917. Through January 31, 1969 we had spent $1,187,790,113.35 and about half of this was spent in the past ten years. In other words, our highway construction expenditures have been as much in the past ten years as in the whole preceding 42 years. The estimates in our 20-year Highway Needs Study were reviewed by the Moody Report and found not to be unrealistic. We are now operating under a 5-year construction program of $450 million and while that program is only slightly below the annual average needs of $112 million over the 20-year period, the Moody Report questions only the adequacy of the program; with this exception, the Moody Report supports the projected program.

Highway needs are a continuing thing and it would not be unrealistic to earmark all highway use tax revenues for highway purposes in even so enduring a document as the Constitution.

I would like to leave with you a brochure published by the National Highway Users Conference which has the constitutional amendments or provisions printed in it for all of those states which have anti-diversion provisions in their Constitution. This brochure contains the wording of an anti-diversion constitutional amendment suggested by the National Highway Users Conference, but I would sug-

gest that you may consider a widening concept of the highway budget. I would not go so far as the Moody Report of advocating an open-end highway budget concept where the highway budget would be called upon to finance what we believe to be non-highway purposes, such as truck service facilities, railroad marshalling yards, containerization facilities at state ports, etc., but we are seeing items included in our highway budget today which were not there yesterday. I refer to the expense of junk yard and billboard control, rest areas and information centers on controlled access highways, and relocation assistance payments to persons displaced by highway construction, etc. These are costs and expenses which should be included in the highway budget and the wording of anti-diversion constitutional provisions should take these things into account, and not limit the use of special highway use tax revenues strictly to highway construction, maintenance and traffic law enforcement, as indicated in the suggested anti-diversion amendment of the National Highway Users Conference.

Also, may I leave with you several copies of the Highway Needs Study brochure published by the Highway Department last year. A study of this material is convincing evidence that the highway budget is going to need every penny of revenue derived from the gasoline taxes and other special highway use taxes. There is a great need for a big highway expansion program immediately in urban areas in our urban transportation plans such as the ones we have already developed here in Columbia, and at Charleston, Greenville, Orangeburg and Rock Hill, and others to be completed at Spartanburg, Sumter, Anderson, Florence and Greenwood, etc. To carry out these urban transportation plans alone will cost over $800 million, or the equivalent of all of the revenue from the present highway use taxes going to the

Highway Department for the next ten years; and we need to get started on carrying out these plans now.

The present 750 mile Interstate System in South Carolina will cost about $600 million when completed and it is estimated that we will need in the next ten years some 500 more miles of 4-land divided rural highways in addition to the 750 miles on the Interstate System and the 500 miles we already have on other state primary routes.

There is little argument against the statement in the Moody Report that "the transportation system of South Carolina is a vital lifeline in the economic growth."

The highway user is now being taxed 'way beyond what would be his normal share of the general taxes collected by the State for the expense of the State government and this special and excess tax can only be justified by using the tax revenues for the benefit of those paying it. The retail price of gasoline in Columbia is, for instance, 33.9 cents and 11¢ of this price is State and Federal tax (7 and 4). The tax is a 52% rate on the filling station operator's selling price. I know of no other commodity which is taxed this heavily - except liquor - where we can accept an element of the high tax rate as a regulatory tax. None of the gasoline tax rate can possibly be classified as a regulatory tax to discourage consumption.

We appreciate the opportunity you have given us to present this request.

CHAIRMAN: Thank you, Mr. Crowson. The Farm Bureau has asked to be heard and Mr. Brooks is here.

MR. BROOKS: Mr. Chairman, we would like to show you a series of slides.

(Script accompanying slide presentation begins on page 12 of these Minutes)

Presented by Mr. Tom Warren.

_____, allow me to express our appreciation for this
Ladies and/or gentlemen

opportunity of meeting with you - and on behalf of Farm Bureau sharing with you a problem with which we believe you too are concerned.

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Now, in case there is some doubt in your mind as to what Farm Bureau is ... let me explain briefly. Farm Bureau is a non-governmental, farm family organization representing producers of all commodities. The members make the decisions in Farm Bureau through the time-tested processes of debate, discussion and majority rule. It is the largest general farm organization in the world, and in 1969 - South Carolina Farm Bureau recorded an alltime high in membership of 30,260 families - or approximately 90,000 individuals.

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Out voting delegates met in annual session on November 16, 1968 - and adopted policy for the year 1969. As good citizens and businessmen, they were concerned with many matters and developed policy concerning a great variety of issues. Their number one concern; however, was one which affects the economic welfare of all property owners in South Carolina, and which poses a rapidly increasing problem.

_____, we're greatly concerned over the matter ...
ladies and/or gentlemen

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... of Property Taxation.

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We're living in what is sometimes called the Jet Age ... and we rightfully point with pride to our swift modes of transportation, our modern conveniences of every-day life, and our up-to-date approach to the problems of business and 20th Century' living. In the area of property taxation; however, we have bcome bogged-down

and continue to use methods of ...

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the ox-cart days of years gone by.

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Today, we want to point-out to you the seriousness of the situation faced by property owners; and emphasize the necessity of standardizing assessment procedure and equalizing taxes on property according to its use rather than its market value.

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Maybe we were a little facetious in speaking of our present property taxation procedure as an "ox-cart" method - but the facts are that it has been the same for as long as any of us care to remember (going back to early statehood days), and the state constitution provides that property be assessed for tax purposes at its cash value. We're also faimilar with the fact that values of real estate and their subsequent assessed value vary widely from county to county - and are most often arrived at by rule of thumb formulas; sometimes inequitable and very often not up to date. In recent years, with the growing need for county revenues ... most counties ... or districts within counties - are considering or embarking on long overdue ad valorem tax reform. Farm Bureau favors true tax equalization, but ... the first and primary step is that the valuations be equitable.

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Now, to get into proper perspective - here's where we are in South Carolina. The legal basis for the assessment and valuation of real estate in South Carolina is derived from the state Constitution. Article 3, Section 29, provides for the assessment at actual value and state: "All taxes upon property, real and personal, shall be laid upon the actual value of the property taxed, as the same shall be

ascertained by an assessment made for the purpose of laying such tax."

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The General Assembly has grappled with the issue in years gone-by and has provided in Section 65-1648 the following: "All property shall be valued for taxation taxation at its true value in money which in all cases shall be held to be the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed as to the uses and purposes for which it is adapted and for which it is capable of being used."

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Article 10, Section 1, of the Constitution, states, among other things - "The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe regulations to secure a just valuation of all property, real and personal and possessory, except mines and mining claims, the products of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious and charitable purposes."

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This presents a serious problem to property owners ... because as applied to properties in rural-urban fringe areas; this method of assessment results in valuations for tax purposes that are strongly influenced by sales of farmland for non-farm use. Land that can support a market value of no more than a few hundred dollars per acre in agriculture may be valued at several thousand dollars per acre for taxation; if nearby lands have sold for subdivisions or industrial purposes for that amount. The same thing applies to homeowners in such areas.

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Now, although you're aware that as the state's largest general farm organization our primary concern is for the welfare of rural people .. here today, we're concerned with the matter of equitable property taxation ... as it affects both rural and urban citizens, regardless of their vocation. It's the principal we wish to explore with you, so, let's get down to some specific cases.

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Consider, if you would, the plight of this family ... and many more in the same situation. They have operated this dairy farm - located in the proximity of one of our largest cities - for many years; and the farm is quite substantial in acreage. When this family purchased and developed this enterprise; it was located quite a ways from the city - but through the years industry and housing have moved continually outward, until now they find themselves almost encompassed by the city limits. They have done an outstanding job in the dairy industry, and would like to continue; but because of inequitable property taxation, their days seem to be numbered. Property here is now valued at something more than $2,500 per acre - certainly not because of its value for agriculture, but because ...

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of a housing development located across a 4-lane highway on which the property now fronts ... plus industrial development in the neighborhood. Unless relief is granted soon, this family will in reality be forced off the land against their will .. because they cannot afford to pay property taxes assessed on such speculative values. On a nationwide average - property taxes have increased by 230% from 1945 to 1965 while farm income remained pretty much unchanged. In this specific area, property taxes increased 6 fold from 1964 to 1967.

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Here's another example. This man works in a factory at a nominal wage - which incidentally has increased over the past several years barely enough to offset the increase in the cost of living. He moved away from the city several years ago in order to enjoy the peace and quiet of country living. He doesn't have access to city water, sewage, or garbage service - nor does he have children in public schools. He purchased 15 acres of land in a then rather remote area, built a home; and hoped to enjoy his latter years. Suddenly he had a rude awakening.

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This modern artery of transportation - which we will use and enjoy - was placed directly in front of his home. Maybe unfortunately, the right-of-way did not touch his property; but the increase in property taxes did ... to the tune of a seven fold increase, none of which went to improve his property, but to provide a service for everyone including non-property owners as well. He doesn't want to sell or move; and he can't afford to stay. This gentleman has a serious problem, and it's not of his own making.

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Here's another example. This stand of young timber is located near Columbia, and adjoins a modern highway. The owner of this timberland also faces a serious tax problem. Timberland, as an investment is faced directly with the problem of long term returns; and its product takes from 20 to 50 years in general to be a marketable product. Also, timberland, in general, probably yields the lowest return on land investment of any crop ... its greatest attribute being ability to produce with relatively small labor and management costs to partially offset the long-term high risk position it is in. I'm talking about the risk of fire, insects, and disease and the extreme difficulty in preventing their damages. This land ... just as the other property we just saw .. has a cash value of approximately $2,000 per acre ...

according to a recent appraisal. Of course, this value is not established on the basis of this land's ability to produce income or return ... but rather solely on the location of the property.

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You see, there's a modern 4-lane highway passing through the property, and industry has moved continually nearer through the years. We know of instances in this same locality where taxes on timberland were increased 10 fold in one year due to a property reassessment program. Now, timber is important to the economy of South Carolina. Approximately 60% of our land is in timber, most of which is being put to its best use. The timber industry as a whole, represents the third largest industry in our state - and contrary to general public opinion, two-thirds of the timberland ownership is made up of small woodland owners. We can ill afford to cripple or destroy this vital industry through inequitable taxation. Now, while we're on the subject of timber, let me mention another point of concern. In March, 1967, the South Carolina Tax Commission issued a directive to all County Auditors and/or County Tax Assessors which said in part and essence - "... you are hereby directed in making assessments of land for the year 1967 and thereafter to give consideration in determining the value of such land, to timber or trees standing thereon. "An opinion fromthe Attorney General's Office upheld the directive; which of course, adds an additional tax burden to the timberland owner.

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As stated earlier in this presentation, this is not a problem that addresses itself to rural property owners only. Urban property owners are affected in a like manner, and in many instances find themselves hard pressed to hold onto property which through re-assessment has been taxed at an increased heavy rate. It's

tragic to see established, solid communities broken up and offered for sale due to this burden. This contributes to the development of ghettos in our cities - and presents a situation which we should certainly avoid in South Carolina.

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Urban homeowners are faced with the same problem of speculative property values as their rural counterparts ... when shopping centers and industrial parks are located nearby ... and market value becomes the basis used for taxation.

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So, under the circumstances just related, what choices does the property owner have? Very few ... in fact, only two, and these are to seek a sale for his property; or try to hand on and seek relief through an amendment to the constitution of South Carolina as it relates to property taxation. To sell is not always an easy, desirable or profitable solution. Experience has shown that tax pressures are likely to lead to transfer of property to developers or speculators, often well in advance of actual conversion to business or industrial use and often with little regard to any long-range plan for land use or development. Also, besides the loss of productive capacity in agriculture, all of our citizens will suffer from the disappearance of ...

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nature trails,

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recreation areas, fields, woods and wildlife around our growing cities .... and the most sinister aspect of all is that we could eventually reach a situation where there is no longer the ability or desire on the part of individual citizens to own property. This might seem far-fetched and dramatic at present; but ladies

and gentlemen, it has happened in other countries - and history also shows that when individual property rights are destroyed, the destruction of human rights follows very soon. We cannot allow it to happen here.

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Of course, this problem of property taxation is not one which is peculiar just to South Carolina. All states have faced similar problems, and at least 16 have taken action and made provisions for a more equitable method of taxing property. With the increasing number and variety of state laws in this field, it is difficult to try to categorize them; but in broad terms, we can distinguish three general approaches. They are -

1. Use value assessment
2. Deferred tax
3. Restrictive agreement

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The Maryland Law is a good example of the Use Value Assessment Law. In 1960 the Maryland legislature proposed a constitutional amendment (which was approved by a large majority of the voters) and passed a law providing for Use Assessment. The law says in part ... "lands which are actively devoted to farm or agricultural use shall be asssessed on the basis of such use ... it being the intent of the General Assembly that the assessment of farmland shall be maintained at levels compatible with the continued use of such land for farming and shall not be adversely affected by neighboring land uses of a more intensive character." The Act further provides that the State Department of Assessment and Taxation shall establish criteria for determining whether lands are in fact bona fide farms and qualify for this type assessment.

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The law in Florida is similar and the Alaska law appears similar as well. Laws of the same nature are also on the statute books of Delaware and Iowa, plus others including Indiana and New Mexico.

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Several states - including New Jersey - use a modification of the Use Value Assessment Law, which is entitled the Deferred Tax Plan. Under this type of law, the assessor determines two values for the property each year. He determines the agricultural value and the tax levy for the year is based on that value. In addition, however, he determines and records the full valuation of the property - or, the value that would have been used for tax purposes in the absence of the Use Value Assessment provision. When the property passes into non-agricultural uses, the difference between the taxes that were actually paid and the taxes that would have been paid in the absence of the special provision is collected. This is commonly called a roll-back tax and is levied for the year in which the land use changes - and the 2 years immediately preceding - in the state of New Jersey. Texas and Minnesota have similar laws with a 3 year rollback, and Oregon has one with a five year roll back. The effect of such a provision is to remove much of the financial incentive for an individual who is holding land for relatively near-term urban use to apply for the differential assessment. Another advantage claimed for the rollback tax is that it provides additional revenue at exactly the time when it is needed for new schools, sewer extensions, and so forth.

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Several states - for which Hawaii is one - have met this problem of equitable property taxation by permissive legislation, allowing the local government and the landowner to enter into an agreement under which the

landowner agrees to keep his land in agricultural use for a period of five or ten years into the future, and in return is granted assessment on that basis. In Hawaii, the agreement or contract is automatically renewable indefinitely, subject to the cancellation by either party on five years notice at any time after the fifth year. In other words, the landowner initially ties his hands for ten years, and always has his hands tied for five years into the future. If he fails to observe the restrictions on use of his land, all of the difference between the taxes that were paid and those that would have been paid under the higher use, back to the time of the initial petition, becomes due. Five percent interest is charged. This method falls under the broad term of restrictive agreement, contracts and easements ... which is designed to reduce speculation in land properties. The laws in Pennsylvania and in California differ in some respects, and the California law is much more complicated; however, their effect is similar. Pennsylvania requires a five year covenant, automatically renewable every year. California uses a 10 year automatically renewable agreement, and the law has seen extensive use. Unofficial estimates indicate that nearly two million acres were covered as of early 1968.

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This then is the spectrum of approaches to differential assessment of property; and the pressing question here today is - "Are we going to correct the inequitable situation in South Carolina before it reaches a disastrous stage; or shall property owners be penalized until we reach a point at which the ability or incentive to own private property is lost? If we're going to correct the situation - the question is then - when and how. Our leadership has studied

and discussed the matter in depth, and we believe that a combination of the aforementioned approaches would best serve the interest of the citizens of South Carolina. It is our recommendation that we pursue an approach similar to the New Jersey plan with some modifications. We recommend that land be assessed for taxation on the basis of its use and that a five year roll back provision be included in the plan. As to timber lands, we recommend that it be assessed and taxed on the basis of the land; productive ability or use; and if necessary, a reasonable severance tax be applied to the timber product at the time of harvest.

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Now, in order to set the record straight, Farm Bureau is not opposed to Property Taxation, nor Tax Equalization Programs. Policy for 1969 states - and I quote in part - "We shall support a genuine tax equalization program in any county where after full understanding is developed, a majority of the people in that county desire such a program. We oppose any move to establish a new assessment or re-evaluation program on property taxes in South Carolina under the guise of equalization that promises in any instance, in our judgment, to raise the proportionate share of taxes being paid by homeowners as compared to other groups ...." Ladies and Gentlemen, in districts and counties where re-assessment programs have been completed, property owners have been penalized ... in some instances, very severely. Let me hasten to say; however, through no fault of local assessment boards - since they have any other choice to abide by present law.

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Now, we certainly realize that as our population expands there is a need for greater local government services and for the revenue to pay for them.

Property Tax, however, is not the only source of revenue - as it was in our early days of statehood when we were a rural state, and property represented our primary tax base. Property owners want to pay their fair share; but since the majority of our citizens enjoy the fruits of business and industry; and our economy is becoming more and more based on industrial enterprises; property owners feel that the time is past due - when there should be a true tax equalization with everyone paying a proportionate share of the bill.

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The problem of ad valorem taxation in South Carolina is acute. This was recognized by the South Carolina General Assembly during their last session, and two independent studies were initiated. By House Resolution, the Tax Commission was directed to study the question and to make recommendations to the House at the beginning of the 1969 session. Additionally, by concurrent Resolution a committee was established to study the matter and to report to the General Assembly. That committee is composed of two members of the Senate, two members of the House, the Chairman of the Tax Commission, the President of the Treasurers and Auditors Association and the State Treasurer. Now, the Tax Commission and the Special Tax Study Committee have been diligent in their efforts and studies to find a solution to the problem.

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Many meetings have been held over the state, and many hours have been spent in discussing solution approaches.

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I think it safe to say that interest on the part of the property owners of South Carolina is at an alltime high over this matter, and they are seeking for an answer, but however, when all is said and done,

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we come back to the Constitution, and its mandatory provision that all property be assessed at its actual value and that all property be equally and uniformly assessed and taxed; and must therefore, conclude that the only answer lies in a Constitutional Amendment.

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So, ladies and/or gentlemen, we have no intention of belaboring the point this evening; but in order that we the people as a sovereign state government -

... preserve our agricultural productive capacity

... preserve our open spaces for recreation

... pursue orderly development of our land resources

... preserve the individuals desire and ability to own property, and

... maintain justice for all,

we have respectfully requested...

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... that the South Carolina General Assembly act during this session, by enacting a resolution proposing to the people of South Carolina an amendment to the constitution of the state - relating to property taxation - to the effect that property be assessed for the purpose of taxation on the basis of the value of its use, rather than its cash market value. We have pledged our total resources, efforts, and support in gaining understanding among the citizenry of our beloved state as to the necessity of such an amendment. We feel very deeply that this is vital to the future of South Carolina and its citizens; and sincerely covet your assistance in every way possible in achieving fair taxation of property for everyone.

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Again, thank you for your presence and kind attention.

CHAIRMAN: Thank you, Mr. Brooks. Mr. James from the Council on Human Relations has asked to be heard. We are happy to have you with us.

(Mr. L. S. James' statement follows on page 26 of these Minutes)

March 5, 1969

STATEMENT TO THE COMMITTEE ON CONSTITUTION REVISION

By L. S. James, Director of Rural Advancement Program of The South Carolina Council on Human Relations.

Mister Chairman and Members:

I am L. S. James, Director of the Rural Advancement Program of the South Carolina Council on Human Relations. Our organization is non-partisan. We are in constant touch with many of the citizens of 38 counties in South Carolina in the central and lower parts of the state.

This means that we are in contact regularly in many ways with 600,000 of the 831,000 Negroes living in the coastal section of our state. From them we get the impression that they feel no one should be denied his right to his greatest opportunity as a free citizen to vote. We sense their general feeling is that the right to vote is a right of a free citizen and not a privilege. Therefore, this right should not be abridged by providing restricting qualifications which could be administered in a discriminatory manner. Even though a compulsory school attendance law will help to produce a more literate voter in the future, the ability to read and write is not felt to be a test of whether or not the voter is informed, when we are in an age of radio and television which provides information about candidates and issues.

To apply literacy requirements is a way of penalizing the illiterate for his educational condition for which he is not responsible. This is similar to criticizing a slave because he is a slave when the responsibility for his slavery is not his own. The state should accept the responsibility and see to it that no citizen is denied the right to vote because he can not read and write. The state of Maryland has a very large Negro popu-

lation, but I have never known them to penalize their illerates by keeping them from exercising their right to vote.

The Negroes have enjoyed exercising their right to the use of the ballot every since the 1965 Act of Congress was passes which made it illegal to deny them voting privileges by use of literacy tests. To revert back to the use of the literacy test will make our total Negro population very unhappy. The last census shows that the net migration of blacks from 1950 to 1960 out of South Carolina was 218,000, while during the same time, only 4,000white migrated. We are sure the state would like to make our Negro population feel more content and encourage some of those who have left to return.

The records show that black elected officials in the southern states reached an all-time high of 388, distributed as follows: legislators 30, city officials 152,county officials 54; law enforcement officials 81, and school board officials 71. This is a very good way to help stop out-migration from southern states which has reached an all-time high of some 4 million Negroes in our generation. The Negroes in South Carolina want to keep their right to vote so that they can get more black elected officials in all branches of our state government. This power of the ballot gives them a feeling of pride in citizenship.

From:
VOTER EDUCATION PROJECT
Southern Regional Council, Atlanta, Ga.

BLACK ELECTED OFFICIALS IN THE SOUTHERN STATES

	ALA.	ARK.	FLA.	GA.	LA.	MISS.	N. C.	S. C.	TENN.	TEXAS	VA.	TOTAL	
Legislators													
State Senate				2					2	1		5	30
State House			1	12	1	1	1		6	2	1	25	
City Officials													
Mayor	3	4			1	1		1				10	
City Council	28	10	15	6	13	7	11	15	8	10	18	141	152
Civil Service Board			1									1	
County Officials													
County Governing Board	2		1	5	11	4	1	4	5		2	35	
County Administration	1			1		1					1	4	54
Election Commission						15						15	
Law Enforcement Officials													
Judge, District Court							1					1	
Sheriff	1											1	
Coroner	1					1						2	
Town Marshal					2							2	81
Magistrate								4	4			8	
Constable	6		1		8	5			3			23	
Justice of the Peace	20	3			8	10			1		2	44	
School Board Officials													
School Board Members	5	33		3	9	6	4	2	1	8		71	71
TOTALS	67	50	19	29	53	51	18	26	30	21	24	388	388

Chart prepared as of information on hand January 10, 1969.
In Tennessee one man serves both as State Representative & City Councilman.

CHAIRMAN: You're mighty kind to come and be with us. Thank you.

(Mr. Tom Linton of the Legislative Council also appeared before the Committee, but due to the lack of time, it was agreed that the Staff Consultant would meet with Mr. Linton and hear his suggestions.)

There being no further business, the Committee adjourned at 5:20 p.m.

W. D. WORKMAN, Jr.
Secretary

Nettie L. Bryan
Recording Secretary

MINUTES

The Committee to Make a Study of the Constitution of South Carolina, 1895, met on Wednesday, March 12, 1969 at 3:00 p.m. in the Governor's Conference Room, Columbia, South Carolina.

The following members of the Committee were present:

Senators -
Richard W. Riley
John C. West

Representatives -
J. Malcolm McLendon
Robert L. McFadden

Governor's Appointees -
Huger Sinkler
W. D. Workman, Jr.
T. Emmet Walsh
Sarah Leverette

Staff Consultant -
Robert H. Stoudemire

CHAIRMAN: I think our first order of business, in view of the fact that we have Representative Pyle of Greenville and Representative Cain of Aiken here, before we get on with our somewhat tedious business of attempting to evaluate the testimony given at the public hearings, we'll be happy to hear either or both of you gentlemen. Vic, you want to address yourself first to the matter of the court system. We're delighted to have to you with us and we appreciate your interest.

MR. PYLE: Marshall Cain and I are members of the House Judiciary Committee and members of the Sub-committee studying this recommendation of the American Bar Association on traffic courts. I understand that this Committee is now recommending a unified court system with a court administrator, but I'm also told that specifically excluded are traffic courts. I want today to call your attention to the recommendations of the American Bar Association concerning including traffic courts in the unified court system. The American Bar Association and I believe, myself, that you don't have a unified court system unless all courts are included . The American Bar Association specifically recommends that the Judicial Article of the Constitution be revised to provide for a simplified judicial structure consisting of a Supreme Court, a Circuit Court and a County Court. The proposed County Court should be flexible in organization so as to provide the number of judges required to transact judicial business within the county. All present county judges, special court judges, and municipal judges, recorders, magistrates and ministerial recorders should be merged into the proposed county court. The county court should be a court of record. The Chief Justice should be provided with an administrative director of the courts to assist in administration of the state court system. Now, I have prepared here and we will shortly be considering the uniform act, setting up court administrators and the uniform act specifically provides in this

act, unless the context otherwise requires,"court"means any court recognized as a part of the judicial branch of government, including any court having jurisdiction in traffic cases. I have an extra copy of the rough draft of the uniform act which I will leave with you. The Highway Safety Program manual of the Federal government has a special chapter on traffic courts and these standards provide, among other things, that the traffic courts be included within the state court system and recommend a state court administrator for all courts be adopted and that this office provide supervision of traffic courts. Our purpose here today is to see if you would review the situation with the idea of going back and including it, traffic courts within the unified state court system.

MR. WORKMAN: Would that mean that city recorder's courts and so on would be, perhaps, divisions within the county court so that the county court would be all-inclusive with jurisdiction throughout the county and include, say, a recorder in Marion County as well as a recorder in Mullins, that these would be separate divisions of the county court?

MR. PYLE: That is correct, yes. This report makes no recommendation of how this should be done.

MR. WORKMAN: We had determined that the unified system would go down to, including the county court, and then permissory beyond that if the General Assembly saw fit to add any other categories to the unified system. Last week at the hearings, it was discussed as to whether or not magisterial courts would be in the unified system and this is something that I think we need to concern ourselves with. Do you have any recommendation there?

MR. PYLE: This is going to be a problem. I think the ultimate goal is to have every court in the State a court of record and have it as a part of the court system. I realize that perhaps this can't be done right away. It's going to take some time. It is not anything that can be done overnight. If we could get the traffic courts provided for in the Constitution to begin with, I think this would help us.

MR. SINKLER: You would like to see the traffic courts included in the mandatory part.

CHAIRMAN: Thank you for coming. We appreciate your assistance.

MR. WALSH: I had a long conversation with Charlie Spencer and he said he would stop over here about 3:00 or 3:30.

MR. SINKLER: He has all sorts of limitations imposed upon his urban renewal and if everyone else is going to be turned loose, he wants to be free, too. I think it is really a mechanical matter more than anything else.

MR.WALSH: We didn't want to make him any worse than he is now, but he wants to be better if the whole thing passes.

MR. WORKMAN: I think that is the wording now.

MR. STOUDEMIRE: "Any political subdivision possessing..." all these rights "by existing constitutional or statutory provisions may continue to exercise such authority." And that I think could be "...may continue to exercise such authority or to operate under the provisions of this Constitution".

MR. WALSH: I think you could easily change that so there wouldn't be any doubt.

MR. STOUDEMIRE: You want to say "either/or", I think.

CHAIRMAN: All right. The motion has been made to take care of Mr. Spencer's--

MR. SINKLER: And take care of the air rights in our general language and take care of the air rights specifically for Greenville and Spartanburg.

CHAIRMAN: All right. Any objection? All right, if there is nothing else of prior concern, we will consider the testimony and the opinions expressed at the public hearings in accordance with the agenda. I suppose there is no better wan than to just atart with the first recommendation and see if we want to make any change in our draft. First, the South Carolina Municipal Association , three basic recommendations. 1. That the Constitution should not prohibit the expansion of the boundaries of one or more municipalities by specific acts of the General Assembly.

MR. STOUDEMIRE: Our draft now says that municipal boundaries must be regulated by general law. They are trying to pick up the North Carolina gimmick whereby the Legislature by specific act can expand the limits of Charlotte and that's the concept. You could pass a general law, could you not, that towns over a certain size could have a great deal of freedom in expanding.

MR. WORKMAN: I think that so far as the Constitution is concerned, we ought to hold to the general law concept within whatever limitations we put in the Constitution and then shift any changes to the Legislature by general law. I don't think we ought to get beyond that in the Constitution. If the North Carolina system is good or desirable, then under the Constitution, as we've drawn it, it can be accomplished by enacting a general law.

CHAIRMAN: I'm inclined to agree with Bill.

MR. STOUDEMIRE: Gentlemen, Section I says, "The General Assembly shall provide by general law the criteria and the procedures for the incorporation...and for the readjustment of municipal boundaries..."

MR. SINKLER: You might have to tie in your classification section. You might have a conflict there that you'd have to do it by general law and general law means one applicable everywhere.

MR. STOUDEMIRE : Section J is the classes.

MR. SINKLER: I think perhaps that what might be an improvement now--the way I read this, the powers given to the General Assembly in J would be subordinate to the powers restricted--the restrictions contained in Section I because you are specific in J as to--you "...establish by law classes of incorporated municipalities, which classes shall not exceed five in number. The General Assembly shall provide by general law for the structure and organization, powers, duties, and functions of the municipalities in each of the classes established; provided that the General Assembly may enact general laws applicable to all classes...". Up here you've said that as far, however, as changing boundaries and new municipalities, has got to be done by general law. Unless you make it clear that I is subject J, I think a court would hold that I controlled J. If you want to get to this idea that the General Assembly could, for instance, classify the larger cities and provide a more lenient method of annexation (there's some merit to that, too)--

MR. WORKMAN: I think they could do so with what they have got.

MR. SINKLER: I don't think so.

MR. STOUDEMIRE: Population class is general law, isn't it, Huger?

MR. SINKLER: We're writing something entirely new here, Bob. You could put in here "within the classifications permitted by Section J".

MR. STOUDEMIRE: You could strike out "No local or special laws shall be enacted for these purposes" subject to the thought that the General Assembly may--

MR. SINKLER: Take the thought of J and put it into I. I don't think you want local, special laws dealing with Mt. Pleasant or Isle of Palms or Landrum or anything like that.

MR. WALSH: I agree with you. However, four or five or six larger cities have problems, in many respects, as you recognize, so different from towns of three or four thousand.

MR. WORKMAN: Am I wrong in assuming that the law which says that cities within classification 1, shall be governed by such and such? I would consider that to be a general law.

MR. SINKLER: I would, too, if it weren't for the fact that you've got I which specifically spells out that as far as "...the procedures for the incorporation...and for the readjustment..." is to be done by general law. I think that you would have to reconcile these things and to justify your thought you would have to pull from J the fact that you could do it within classes.

MR. STOUDEMIRE: Let me ask you this. Take the last sentence. "No local or special laws shall be enacted for these purposes". however the General Assembly may establish reasonable classes--

MR. SINKLER: --Within the classifications authorized by Section J.

CHAIRMAN: That might be the answer.

MR. WALSH: I think that would improve the situation.

MR. McFADDEN: It still would not allow specific act.

CHAIRMAN: This will clarify the right to do it within the five classifications. Let's pass on to number 2. "That special service districts be prohibited by the Constitution unless the need for them can be justified before a state agency or the court".

MR. WORKMAN: I would recommend that that be left up to the Legislature. Let me raise the practical objection to the inclusion of this that the subject is a little complicated and I fear that if we were to put out a blanket prohibition against public service districts that there could well be a furor all over the state by everybody that doesn't understand what we're driving at. That this thing has got to be handled more by attrition and by manipulation within the Legislature. If we could come out with anything in the Constitution it would necessarily have to be a blanket action.

MR. WALSH: You might be right on that.

MR. STOUDEMIRE: There is nothing in our draft, is there, assuming it were adopted, that would prevent the 1975 Legislature from passing a law which says, "special service districts to be created must meet the following criteria".

CHAIRMAN: Right.

MISS LEVERETTE: I think we're running in again to this old tendency of people interested in these areas to want to pin things down in the Constitution when they should be omitted.

MR. SINKLER: I think we have given a great deal of relief.

MR.WALSH: Huger, do you feel that under the provisions we now have in this proposed Constitution that they could tax everybody in a county for fire protection as long as they don't borrow money?

MR. SINKLER: No, I don't think so.

MR. WALSH: The point I'm making is we clearly stated that you can't borrow money unless it's paid for by those who get that service and I think that's fair and right. Suppose they say that they're not going to borrow any money, but they need to lay a sewer in a fifty square mile area outside of Columbia and we're just going to put a tax on everybody in Richland County because under our version you can do sewer work--the county would have that right. That ought to be prohibited under our Constitution.

MR. SINKLER: As I understand it, it is. Let's look at the language. I think it is prohibited unless they put on a tax on those who get the benefit and I think a person in the city of Columbia whose already got sewers gets no benefit, therefore they can't be taxed. That's the way I construe it.

MR. STOUDEMIRE: "No law shall be enacted permitting the incurring of bonded indebtedness by any county for sewage disposal..." and so on. Article VI, Section K.

MR. WORKMAN: I think you might be unnecessarily restricting the hands of county government. I don't know what the financing down the Golden Strip was, but providing water down to Simpsonville and Fountain Inn served not only Simpsonville and Fountain Inn, but by virtue of the industry that it attracted, it served all of Greenville. In my judgement, a strong case could be made out that this was a legitimate county expenditure although the water mains went on into Simpsonville and Fountain Inn. If we adopt this thing, it would mean that they couldn't do that unless they just taxed those people down there.

MISS LEVERETTE: The court interprets those things according to the fact situation.

MR. McLENDON: I would hate to bear down on the county and limit its ability. That ought to be a judgment of the county officials.

MR. STOUDEMIRE: I think you would have to make a statement that no county-wide tax could be levied to support a function for a particular district and such a statement worries me.

MR. McLENDON: It goes back to the same old theory of educating the children where the children are and taxing where the money is.

MR. SINKLER: I think it offends, certainly my idea of due process that you would confer a special benefit and that's what a sewer is, on one area at the expense of another area. That runs counter to the whole theory of assessments and I think it runs counter to due process.

MR. WORKMAN: I think the whole thing revolves on what is an area. In my judgment, a county is an area. I think the county is the unit of government, a creature of the State, but it is up to the county authorities to determine, at their own risk. If they determine that they're going to take money from here and spend it here, this is a hazard that they undertake.

MR. SINKLER: I feel very strongly that those who get the benefits should pay for them. Now, that doesn't mean that the General Assembly hasn't got a wide range of power in determining the scope. The guy on the hill who has got his own septic tank doesn't need the public sewer, but he gets the benefit of the sewer down in the slum because it preserves the public health, and I think the General Assembly's got a wide latitude there. While I don't think you could tax all of Marion County for Britton's Neck, I think you could probably incorporate a rather large area of Marion County under this. If you don't limit it some way, you'll have a county that has one taxpayer, you'll have that one company paying for benefits for every little part of that county. K, I think should be "no law should be enacted permitting the levy of a tax or the incurring of bonded indebtedness". I think you ought to go right back to Section 6 of Article X with the excention that we've put in here.

CHAIRMAN: Huger, what's the Constitutional prohibition to keep a county from taking a 100,000 dollars that they might have in the general fund

and building that sewer, not incurring any debt or levying any tax? Because it's not a general county purpose, but under the proposed draft this prohibits only the incurring of bonded indebtedness.

MR. WALSH: I thought we had talked about it and I believe it ought to go in there. If you are talking about a health situation, Mac, I believe there are many precedents for the whole county chipping in to help this one poor area in a school district or health facility. The area you're talking about would be a health problem which could be justified on that basis, but not justified on general county purpose.

MR. WORKMAN: If we're moving away from special service districts and we want to do something in Britton's Neck, where are we going to draw the line?

CHAIRMAN: Let's get back to the recommendation here. That special service districts be prohibited unless the need for them can be justified before a state agency or court. I don't see any basis of putting in any agency to justify them. The General Assembly can do that.

MR. WALSH: In most states they are not justified in the General Assembly. It's a factual situation as to whether or not Charlotte can provide the services outside an area. It's a factual situation as to whether they need them and it's very seldom that the General Assembly would take the time to get those facts. It's a very customary thing in the United States for that to be done.

MR. WORKMAN: It looks to me that you are arguing at cross purposes here because in the one area we say knock out special service districts, but in the argument that you and Huger advanced for taxing the people that are getting the benefit, you are, in effect, creating a special service district.

MR. SINKLER: I don't think you'll ever get away from special assessments. I'm trying to get away from the complexity of a political unit being established with its own commission, its own set of government. I'm trying to let the county take care of all that.

MR. McLENDON : Do you think that by the addition of the words "permit the incurring of bonded indebtedness or levying taxes" would cure the situation?

MR. WALSH: That would help it a good deal.

MR. WORKMAN: You could have your geographic service districts, but not your administrative service districts.

MR. WALSH: Right. It could be administered by your general governmental unit.

MR. McLENDON: We all have the same idea, but we are trying to get there by different routes.

MR. STOUDEMIRE: Are you killing point 2?

CHAIRMAN: We are killing point 2. All right, recommendation number 3.

MR. WORKMAN: I was going to propose that we eliminate the numerical reference in our Constitution and let that be determined by legislation. Whether there be 25,000 or 10,000, whatever the cut-off point is for home rule.

CHAIRMAN: I think that makes a lot of sense.

MR. WALSH: You can't have effective home rule unless you have a large enough unit.

MR. WORKMAN: The point I'm making is that in the Constitution, we're looking way down the road. It may well be that improved municipal processes or changing in the nature of municipalities so that a city of 5,000, under certain circumstances--

CHAIRMAN: All right, that disposes of 3. Now, we get to the League of Women Voters' recommendations. Point 1. "That out-of-state voters be permitted to vote in National Presidential Elections if they have been in South Carolina for 30 days."

MR. WORKMAN: We discussed that and decided that six months--

CHAIRMAN : We decided the practical difficulties of providing separate ballots and voting machines--

MR. WORKMAN: It became mechanically difficult.

MR. WALSH: Reducing it to six was a pretty good compromise.

CHAIRMAN: Leave it as is. 2. "That the Constitution omit any statement permitting a literacy test for voting."

MR. WORKMAN: We did not require a literacy test. We permitted a literacy test. I move that the present wording be retained.

MISS LEVERETTE: What the League wanted was not to leave it up to the General Assembly.

CHAIRMAN: We'll pass on to 3. "That the Constitution require permanent registration".

MR. McLENDON: That's a legislative problem.

MR. STOUDEMIRE: Our provision now says not less than ten years so they could provide if they wanted to.

CHAIRMAN: Number 4. "That the right to cast an absentee ballot be specified in the Constitution".

MR. STOUDEMIRE: I think I interpreted them correctly. They were concerned about absentee ballot, yet usually the League doesn't ask for such a minute thing to be in a Constitution.

MISS LEVERETTE: What the League is interested in is to see some expansion which can be done through the General Assembly.

CHAIRMAN: All right, number 5. The appointments.

MR. STOUDEMIRE: Everybody elected now they would have appointed by the Governor directly.

MR. WORKMAN: I think we decided it. We thrashed it out.

CHAIRMAN: Number 6 is the selection of judges. Mr. Kester also had the general idea or suggestion. We spent an afternoon on that and unless someone who voted on the prevailing side wishes to reconsider, I guess the matter is closed. Number 7. "Home rule provision affecting county governments be permitted in all counties rather than being limited to those having a population of 100 people per square mile".

MISS LEVERETTE: Now, I would like to speak on that. Bill, you mentioned that the other day that perhaps they had it confused with city. I think what the League had in mind there was that on this merger, metro government type thing, that perhaps home rule should be extended to county government further than we did in the Constitution. We limited it pretty severely as far as counties were concerned. We have opened it completely now--it's up to the General Assembly for the municipalities, but the League's thinking is, I think, is this possibility of county government becoming, hopefully, more prevalent, more local government involved and that perhaps it should be extended further than we did.

MR. STOUDEMIRE: Sarah, are you saying that what the League is really saying is that home rule ought to be permitted for incorporated municipalities and counties?

MISS LEVERETTE: Yes. We have just this minute extended it Constitution-wise completely to the municipalities, leaving it to the General Assembly to make any limitations, but on the county we were very severe in our restrictions and thinking in terms of the growth of local county government as, hopefully, it will be that possibly there should be more home rule or an extension of home rule.

MR. WORKMAN: You think that a county as well as a municipality should be able to adopt its own charter and move in that direction. That would be possible. We provide for it in municipalities and then as to counties we let the legislature determine. They could do likewise, but they aren't required to do it.

MISS LEVERETTE: I think that what we have in mind here is that it should be made easier. Maybe under this classification thing you can bring home rule in, but home rule is so entirely different, to my mind, from the optional forms of government and we have implied that by the fact that we've specified in certain instances.

MR. SINKLER: I think you're right, Sarah. I think we've limited it in the case of the county, but I also think that we were very wise in doing so because I don't think these smaller counties are really set up do the whole thing.

MISS LEVERETTE: I wouldn't want to see it opened wide to every county. On the other hand, I do think we have put a rather severe restriction on it.

MR. WALSH: What we have here will enable an urban county to become a home rule type of government.

MR. STOUDEMIRE: If it merges, only.

MR. WALSH: That's an incentive because Greenville is very rapidly becoming an urban county. There you would have a strong incentive to combine in one government and that's what we are encouraging as we set it up now and those are the only ones that really need it.

MR. SINKLER: I certainly feel that way.

MR. WORKMAN: Let's look to the crux of what Sarah's talking about. If we want to make home rule available as a technical form of government to the counties, Bob Stoudemire suggested the possibility of adding to Section 6 to say something to the effect that "nothing in the above shall be construed to prohibit the General Assembly from making possible home rule for counties".

MR. WALSH: That is available now.

MISS LEVERETTE: Not without Constitutional amendment.

MR. WALSH: You can actually give home rule to a county now, but the home rule we've been talking about is distinguished by the fact that it is in the Constitution and self-executing. In that regard, I rather agree with Huger that with our transition period here, we would be better off to limit it to those urban counties that really need it.

MR. WORKMAN: I move that no change be made in our draft provision.

CHAIRMAN: You have heard the motion. Those in favor of the motion, raise your hand. No further vote is necessary. All right. Number 8. "That the Constitution require the General Assembly to enact laws regulating the use, ownership, and management of property when acquired through the Urban Renewal Section."

MISS LEVERETTE: I think I can explain that in that there was a great deal of feeling in Leagues all over the State about things that had happened in other states. The possibility of things being handled in a rather shipshod way and they felt that they should--and there are, Bob, I believe some states that put provisions in there so that the General Assembly will have to protect certain areas.

MR. STOUDEMIRE: Are you thinking of procedural rights or both?

MISS LEVERETTE: Procedural rights, primarily.

MR. WORKMAN: Let me ask you, as an abstract Constitutionalist, would you favor putting that sort of material in the Constitution?

MISS LEVERETTE: Yes, I would because I think that compliments the giving of the power, the extension of the power. You are also building in a protection as far as the gift of that power is concerned. You're

telling the General Assembly that if this is done it's going to have to be done with some protection.

MR. STOUDEMIRE: I think what the League is saying is that there shall be a mandate to the General Assembly that it must enact laws regulating the use, the ownership, management of property--

MISS LEVERETTE: In other words, this would be general. It would be Constitutional type material. What concerns the League primarily, in general, was the fact that if you extend this power, turning it over to private individuals, you're extending the power of eminent domain, but are you sure that it is going to be implemented properly, is it going to be protective where there would be no corruption.

MR. WORKMAN: I don't think you can do that in a Constitution. You can't mandate somebody to be honest.

MR. SINKLER: We have specifically authorized special law under E. To do what you want, you probably have to say that whenever any town does act in accordance with the authorization, they would have to act under a general set of guidelines established by a general law applicable to all cities that do have this power. I think you've just got to leave it to the General Assembly.

MR. WALSH: I just don't believe it's necessary. I believe the General Assembly is sufficiently conscious of this thing and I think as the federal government has gone along they have become more conscious of it and they are more particular about it than they have ever been.

MR. WORKMAN: What the League is concerned with is exactly what the Constitutional Convention of 1895 was concerned with, with some obvious derelictions of duty, with some malfeasance, with corruption and the 1895 problems that we are not wrestling with grew out of the fact of their attempting to put in enough "thou shalt nots" to prevent it. It didn't prevent it all. It just cluttered up the Constitution. What we feel is that when we say, within this particular area of urban renewal, we open up the Constitution to sufficient degree that the General Assembly can move in and say that under these conditions, we will have urban renewal, with the approval of local authorities, but I think that if we got into the "thou shalt nots" again then we go right back to cluttering up.

MISS LEVERETTE: I don't think the League was interested in any specifying, it's the principle they're after.

MR. STOUDEMIRE: I think what the League is asking is for the privilege of going into urban renewal, then the General Assembly must, as a part of this, enact laws specifying the use, the ownership and so on. How can you enumerate all the things that the General Assembly ought to enact?

MISS LEVERETTE: Well, I think what these other states have done, they have included such a provision with the thought that it would be general, but I don't hold any great brief in view of what you've said here. There was a very strong feeling,within the League, in regard to this, but the whole idea being a principle and if we, as a Committee, feel that this

principle is served, as it now stands, then that answers the question.

MR. WALSH: In view of that, it might help our situation if we could amplify our comment a little bit more.

CHAIRMAN: All right, Bob. Recommendation number 9. -"That the Constitution should be more specific on the allocation of delegates to a Constitutional Convention:" Sarah, do you know what they mean on that?

MISS LEVERETTE: I think they felt that it was left up too much to the General Assembly as to what it should consist of. What they were trying to do, and I think this is sorta' impossible,was to get into the make-up of a Constitutional Convention. You can't do that.

MR. WORKMAN: We won't be able to cover the whole thing. There are two or three things that I would like to note before I have to leave. With respect to General Pinckney's exclusion or elimination of the word "co-terminous", I would favor that because I don't think it adds anything to it. It retains the Governor's appointment, but it does not terminate it and it's not an invitation for each Governor to name a new Adjutant General. One thing we've got to watch out for, that we provide elsewhere that no position shall be for life or during good behavior and so we've got to avoid indefinite terms in that sense. Now, about the only other major thing--

MR. STOUDEMIRE: You want to keep the word "co-terminous"?

MR. WORKMAN: What we have in there is the word that"he shall be appointed by the Governor for a term co-terminous with the Governor" with the Legislature providing such standards as must be met, as I recall the language in the thing. I am all for that and I would agree that we can eliminate the "co-terminous" bit without weakening our position. We get the same method of appointment and if the General Assembly says it is to be drawn from a senior board of National Guard officers or whatever else, but I think that by eliminating"co-terminous"-- I don't think it's big fight one way or the other. The term would not be fixed in the Constitution.

MR. STOUDEMIRE: But it could be fixed by law.

MR. WORKMAN: I'm just shifting the buck to the Legislature in the fixing of standards. We don't mandate the Governor each time to appoint an Adjutant General.

MR. McLENDON: That was his main objection.

MR. WORKMAN: Now, then, if the thought comes up again when you get down to the Farm Bureau as to the classification of property, I would favor the Constitution permitting the classification of property without us necessarily trying to detail what it was, so that there could be taxation by use, or such other reasonable categorization of property. That revenue producing property could be assessed at a different ratio than non-revenue producing property. We are so far short of complying

with what's implicit in the Constitution now that we're talking in terms that just don't jibe with one another. My concern is that we are in the position now of, in effect, imposing a tax burden on individuals, through no fault of their own and no change of their circumstances and they become burdened with increased tax assessments which means that they have to move off the land or sell the land or convert the land, that we don't leave them in free enjoyment of their property if they're in an area where somebody comes and puts a housing project alongside, or an industry or something else. The dual type that was presented by the Farm Bureau, to me, represented an approach to it.

CHAIRMAN: I was impressed by the Farm Bureau's presentation.

MR. RILEY: Bill, the fact that that property has changed value is a pure result of the growth of the county, all of which takes most cost, more money and everything else and I think it's perfectly reasonable that if a man's property has been enhanced in value as a result of the property's growth that his tax burden be increased accordingly.

MR. WORKMAN: This is the distinction between land per se and the use to which the land's being put. And my concern, philosophically, is protecting the individual's right to enjoy his property in the purpose to which he wants to put it. If it be farming, to continue to farm. That he should not be penalized because next door to him goes an electronics company.

MR. SINKLER: Do you want to consider the present use of the property as an element of reaching the assessment?

MR. WORKMAN: What we're doing there, we're getting back to getting away from the uniformity.

MR. McFADDEN: At the risk of legislating in the Constitution, as a possibility of overcoming the objection that Mr. Sinkler raised to legislating by general law some type of relief, then could not some provision be written in here relating to the limitation on the type of measure that could be adopted by the General Assembly. In other words, to overcome the objection to industry that might just be cut out from under the bottom, permit the General Assembly to adopt one of these three plans outlined by the Farm Bureau.

MR. WORKMAN: Let me just reword my position. I would not like the Constitution to prevent the establishment of a system whereby this inequity could be worked out.

MR. RILEY : The part that worries me more than the farm land is the slum land, the underdeveloped property and this would just absolutely encourage slums.

MR. WORKMAN: I think you understand my philosophy. I don't want to slam the door on some relief such as the Farm Bureau is seeking where the land is being used not for suburban development, not for industry or commerce. I'm not going to make a big issue of it.

CHAIRMAN: All right, we're going to try to get away by 5:00 which will probably mean that we will have to have another session. The next recommendation of the League of Women Voters, "That the Constitution should provide for the initiative and referendum processes". We discussed that and voted it down without too much dissent.

MISS LEVERETTE: The feeling was that the General Assembly could continue to hold anything like a convention down. Just wanted the people to have their right as the source of power in the State. I know what the objections are--that you would have any and everybody coming in here proposing this and that and the other and that perhaps that would not be a wise thing, but the League felt that the people should have a right as a part of this source of power.

CHAIRMAN Anyone wish to change the existing provision which does not permit it? All right, we can take Mr. Hinson and the S. C. Council of Private Colleges. I think that has been sufficiently discussed, the question of whether we should go the middle route, which we did, or go one extreme or the other (by extreme, I don't mean to catalogue it as improperly extreme). Mr. Hinson's view that the present provision should be kept, no aid directly or indirectly--the S. C. Council of Private Colleges say, delete the word "directly and indirectly". We have deleted the word "indirectly" from our draft.

MR. McLENDON: I think we ought to stand with what we have got.

MR. WALSH: If we do any more than that, we will be in trouble.

CHAIRMAN: Mr. Sterling Smith's recommendations.

MR. WALSH: They are great, but we've got to get a good assessment system first before we ever go to that. He's got good ideas, but we're just not that far advanced.

CHAIRMAN: All right, Mr. Kester. "That reapportionment formulas be specifically fixed in the Constitution".

MR. McLENDON: No, can't do that.

CHAIRMAN: All right. "That all major judges be nominated by a judicial commission and appointed by the Governor". We have decided against that unless there's a change of sentiment. How about this next suggestion That sounded like it might have merit. Use "limited" instead of "inferior" courts.

MR. SINKLER: "Inferior" is a perfectly good word.

MISS LEVERETTE: I take issue with you on that, Huger, for this reason. There's never been in South Carolina any legal pronouncement as to what is an inferior court and under all the cases that I've seen (I've been reading a little bit on it) it is such a flexible word. If you have something in mind that you are pinning this to and expect the term "inferior" to hold it down, I'm not so sure it will.

CHAIRMAN: Let's put "limited".

MR. SINKLER: "Limited" is a more restrictive adjective than "inferior". I think you have a good point.

CHAIRMAN: He suggests that the verb "may" be substituted for "shall" in the statement pertaining to the right of the General Assembly to enact laws changing venue.

MR. STOUDEMIRE: We say the General Assembly "shall" provide for a change of venue, you see. And he suggested the same things about the substitution of verbs concerning disqualification. The idea is that they "shall".

CHAIRMAN: "...that a commission be established to handle reapportionment in the event the General Assembly fails to act." That presumes the General Assembly failed to act and the General Assembly will never fail to act. Then he suggests "that when the method of selection of a state public official is changed that the change not apply to the present incumbent". Unless someone feels strongly, let's pass on. Have we decided on the Adjutant General's change?

MR. STOUDEMIRE: Well, now, Bill says take out the word "co-terminous". Article XII, Section C, "...whose qualifications, rank, duties, and compensation shall be prescribed by law. The Governor, by and with the advice and consent of the Senate, shall appoint the Adjutant General whose term of office shall be coterminous with that of the Governor". Do you want to say, "...Adjutant General whose qualifications, rank, duties, and compensation shall be prescribed by law"? Or just leave out the word "term" altogether? "The Governor, by and with the advice of the Senate, shall appoint the Adjutant General whose term shall be determined by the General Assembly"?

MR. RILEY: What he recommended, according to my notes, is "...whose term of office shall be as prescribed by law".

CHAIRMAN: Makes sense, doesn't it?

MR. STOUDEMIRE: I don't see a thing wrong with it. Therefore, it could be coterminous.

CHAIRMAN: I think the law normally would be, but if you had the death of a Governor, or a resignation, it wouldn't automatically mean that a new Adjutant General would come in, which I think makes sense. All right, you've got the Highway Department's wanting all the gasoline tax money.

MR. WALSH: I think we ought to leave it like it is. It has been like that all the time.

CHAIRMAN: Any strong sentiment to go back into this? All right. Mr. Dreher's suggestion which is sorta' like the pending bill in the House.

MR. McLENDON: I'm in favor of leaving our provision. I would leave it like it is.

CHAIRMAN: All right. The Farm Bureau. We have gone into that. Does anyone have any specific suggestion as to a change or shall we leave it?

MR. SINKLER: I would rather leave it. I can see the pros and cons.

CHAIRMAN: That's a provision that can cause some problems in the General Assembly.

MR. STOUDEMIRE: My feeling on this is that if you start this type of thing, then my feeling would be to go back to Professor George Aull's original letter in which he says he wasn't so sure if the Constitution just should not simply say that "the General Assembly shall provide for a fair and equitable property tax system". Then that throws it right to the General Assembly.

CHAIRMAN: I like that.

MR. STOUDEMIRE: The idea is that you make this tax a Constitutional issue where you don't make any others. If you start giving this, can you restrict it to this idea?

MR. McFADDEN: Mr. Chairman, as I understand this provision, this would impose a property tax on intangibles, unless the General Assembly acts to exempt it.

MR. STOUDEMIRE: My memory is that when we discussed this, exemptions on intangibles comes in on a series of amendments and my memory is that the Committee went on the basis that the first act of the General Assembly would be to introduce a law to exempt them just as they are now. The Constitution now says that they've got to pass a law making them taxable. Otherwise, they're exempt. I think the Committee was leaving it open rather than having all this language in the Constitution.

MR. McFADDEN: There would be no basis for some partial or limited tax on intangibles.

MR. STOUDEMIRE: If you are going to tax intangibles, wouldn't it be better to approach it through an income tax?

MR. SINKLER: You're giving them double taxation.

CHAIRMAN : We're going to have to have another session. Let's reserve that as one of the things to give some thought to.

MR. SINKLER: Why don't we have Bob prepare something for our consideration along Dr. Aull's line. It might be the best way to do it.

MR. RILEY: Why not consider putting the exemption in here?

CHAIRMAN: I'm not convinced that I would want to vote right now to do it. The whole question is something I want to think more about. This rollback thing had some right attractive features that might lead me to go along with their position, but I don't know how that would fit into a Constitutional picture. I'm inclined to think that the broad, general statement that Bob suggests might be the answer to the problem. I don't know. Does everyone agree that this is something that maybe we ought to look into further?

MR. STOUDEMIRE: The old Constitution says that "no person who is not an elector shall hold any public office". What we have now is a statement that any qualified elector can run, but we don't have any type of a statement on whether a person has to be an elector to hold office. We did discuss that you may want to appoint a person to an appointed job who is not an elector. Do you think the statement "any person who is an elector is eligible to run" is strong enough or do you want to go on and add that any appointed job would have to be an elector--any elected job.

CHAIRMAN: Isn't that sort of an academic question?

MR. STOUDEMIRE: Right now there is a positive statement which we deleted.

CHAIRMAN: What do we have now?

MR. STOUDEMIRE: "Any qualified elector may run for any elected position". That's it.

CHAIRMAN: Don't you think that's enough? Any qualified elector can run for any office. I think that is good.

MR. STOUDEMIRE: In our provision on the Lieutenant Governor, we say that if there be a vacancy, the Senate shall forthwith elect a senator to serve as Lieutenant Governor. Now, the question has been raised, what if no senator, under any conditions, says that he will have it.

MR. WALSH: I'd say leave that alone.

MR. STOUDEMIRE: When we changed the right of the Governor to remove people on embezzlement, moral turpitude and so on, we were concerned about municipal clerks, treasurers and county treasurers and so on, as well as state officials and we so expanded. Now, on embezzlement, the way it's worded now, "any officer or employee". The embezzlement limits the number of people on that. We get down to moral turpitude, "any officer or employee" and would that not get the Governor into removing a garbage collector and so on? I'm just wondering if on moral turpitude it would not serve the purpose of the intent by simply restricting it to the word "officer". You would get your key people under the word "officer", I think. Now, just to be thinking about for the next time. I've checked the Minutes out carefully on all this court thing. The Minutes of December 7th clearly show that the Committee intended for the unified court to do down through, and to include, the magistrates. This would make a magistrate, as we now have it, have a five year experience as an attorney and so on. Our basic concern about

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courts, is it not the Supreme Court and the Circuit Court.

MR. WALSH: And the county courts.

MR. STOUDEMIRE: Then that gets you into terminology trouble. Do we need to say more in the Constitution about the qualification of judges beyond the circuit court and leave the rest up to law?

MR. WALSH: I believe so. You're going to run into a lot of problems.

MISS LEVERETTE: Bob, you originally did have in here "Judge of the County Court" along with Circuit and we changed that to "any other judge within the unified system".

MR. SINKLER: Don't you think we want to leave the unified court system and let the thing apply to the limited courts.

CHAIRMAN: Courts of limited jurisdiction.

MR. STOUDEMIRE: "That a Supreme Court and a Circuit Court Judge shall have the following qualifications". "The General Assembly by general law shall spell out the qualifications for other judges.

The meeting adjourned at 5:15 p.m.

W. D. Workman, Jr.
Secretary

Nettie L. Bryan
Recording Secretary