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MINUTES OF COMMITTEE MEETINGS

6-7 OCT. 1967

## MINUTES OF COMMITTEE MEETING

The Committee to Make a Study of the Constitution of South Carolina, 1895, met in the Wallace Room of the State Board of Health Building, Columbia, South Carolina on Friday, October 6, 1967 and Saturday, October 7, 1967.

The following members were present:

### Senators-

Richard W. Riley  
Marion Smoak

### Representatives-

J. Malcolm McLendon  
W. Brantley Harvey, Jr.

### Governor's Appointees-

Miss Sarah Leverette  
T. Emmet Walsh  
W. D. Workman, Jr.  
Huger Sinkler (Friday)

### Staff Consultant-

Robert H. Stoudemire

The meeting was called to order by the Vice Chairman, Mr. Malcolm McLendon.

MR. STOUEMIRE: Gentlemen, your minutes from last time will be ready at noon today. We had some decisions to make and we had to let the working papers take priority. In the future Mrs. Bryan, I hope, will be able to do our recording and therefore this part of the secretarial work will be separated from the other. The secretary work of this Committee is going to be a full-time job. On the minutes--what I tried to do last time, the first day's meeting, was work with the secretary and to sort of condensed the minutes somewhat. This took about two days of my time and became hopeless so it appears as if Emmet is winning after all--that in the future they will be taken off directly onto a sheet that can be Zeroxed and it will be a more or less verbatim recording. This is faster and saves a lot of trouble and, of course, we will clear out foolish statements. That is the situation on the minutes. Next time--the research reports are being farmed out. This will give me the time to catch up on the running tabulation of what we have done and start compiling it in an orderly fashion so that you can see where we are. The Attorney General has ruled that we can only use the most recent expression of the General Assembly which gives us \$15,000 as opposed to \$25,000. This appears to be enough to keep us going until the General Assembly comes into



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session, but it will not be ample to print up and distribute anything we might want to do. I think we can keep going, pay for our research and things of this nature on this. And I believe that's about all I have. Mr. Chairman, I would propose that we try to clear some of the things that we left hanging fire from last time. By the way the minutes will show--at the end of each session's minutes, we are keeping a tabulation of all things delayed, holding fire and so on so that as we go through them, we can tick them off and make sure that we have them.

MR. McLENDON: As you know, I'm pinch-hitting for John West who is in Europe on some other government business. Between Bob and Bill we'll try to keep this work going. I've got a letter from John. It says, "Dear Mike: As announced at the last meeting, I regret that I will not be able to attend October 6th and 7th. I particularly regret that I will not be present for I feel that the finance, taxation and indebtedness sections are probably the most important and most controversial. At this writing, I do not have the benefit of Mr. Stoudemire's research, but I would like to go on record as leaving to local governing officials a wide discretion in determining debt of government sub-divisions and the other points in it." Then he says, "I also wish to endorse the suggestion made in our last meeting that some arrangement be made to allow us to be free October 28th as I have a speaking engagement in Charleston on that particular date and most of the Committee will probably want to go to the Clemson-Alabama football game". Of course, that's the same day as the Maryland-University game, the 28th. Thought I would just pass that on to you. All right, shall we proceed then, Bob, with the things that were left over from our last meeting?

MR. STOUDEMIRE: The first thing we left over was a statement on the suspension of the laws, Article I, Section 13. Primarily, we reworked it--

MR. McLENDON: Where is that now, Bob, in the working papers?

MR. WORKMAN: Page 5, first working paper.

MR. SINKLER: I'll just follow.

MR. STOUDEMIRE: We reworked that a little bit, as you recall. "The power to suspend shall be exercised only by the General Assembly" and so on. I believe Brantley brought up the question of checking out the laws on that which I have done, Brantley, and see if you find anything else other than this. In checking out the laws, I find the Governor has certain things that relate to violence which was done in '57 and so forth and so on, but I don't find, really, anything that would conflict with what we were doing. I checked a number of index listings and this is all I came up with. Really, it doesn't bring about true suspension and the suspending of the writ of habeas corpus was on the next page.

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MR. WORKMAN: Your point is that what you have found here reflects the action heretofore taken by the General Assembly which moves in the direction of permitting certain suspension of the law.

MR. McLENDON: Well, in view of your research then, is our language that we suggested there last time --

MR. STOUDEMIRE: I think it's all right

MR. McLENDON: Read the thing to us.

MR. STOUDEMIRE: I think this would be right. "The power to suspend the laws shall be exercised only by the General Assembly or by its authority in particular cases expressly provided for by it."

MR. WALSH: What page is that on?

MR. STOUDEMIRE: It's on page 5. My memory is that execution of the laws and suspending the execution was considered to be redundant and not needed.

MR. WORKMAN: We made it the power to suspend. I would move then that we adopt it, tentatively, under the re-wording that you've just read.

MR. McLENDON: All right. No objection. We'll move on to the next.

MR. STOUDEMIRE: Gentlemen, more important is Section 16, Searches and seizures. Page 6, and actually on page 7 is the most significant thing. Our tentative agreement was to accept the Maryland wording instead of our current wording, but to work on the secrecy aspect and also whether or not the word "interception" or "violation" and so on was the correct thing and to check this with the Attorney General. Now, I've given you the report from the Attorney General and he very much agreed that this matter of secrecy is very grave, not only from electronic devices, but also he requests that a wording be wide enough to take care of data processing banks. That where someone can put all the tapes together and come up and find out page after page of information about a person, you see. Apparently this is, according to his letter--I was unaware of this until then--apparently this thing has been discussed in national meetings where they are quite alarmed about what they can find out about a person. Then, also, Dan brings in this business which we had not talked about last time, under this new case referring to inspections--electrical inspections, sewage inspections--this type of thing. Now he thinks this presents us another problem and as you will see, he has a wording there that he apparently recommends that it be added to the end--that last portion down here. He takes care of that. Now he gives the explanation as to why this is needed, that you need something to clear up the cause for which these things can be issued. Otherwise, the regular thing really talks in terms of criminal prosecution whereas this would not

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necessarily be, is the way I read his letter.

MR. WALSH: Now this--what you have given us here is what he suggested being rather---

MR. STOUDEMIRE: No. The last sentence. Now, after he says that we need to worry about secrecy which we already determined, then I re-worded that to try to take care of what I thought we had said last time where I believe Dick brought up the question of this wording and come up with the language there. I wrote it out so that we would have something to look at. On this, gentlemen, the wording doesn't bother me much until the second part of it. "The right of people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures and from unreasonable invasions of privacy." Now, Dan did suggest that language. "Shall not be violated."

MR. HARVEY: As against communications from unreasonable interceptions.

MR. STOUDEMIRE: Yes, because it's broader than just communications, especially the data banks. "From unreasonable invasion of privacy."

MR. WALSH: I rather liked that language Dan suggested. Because you know in our last time--interceptions seemed to confine it to communications.

MR. STOUDEMIRE: If you go on further--now, you see this is an old standard clause--"No search warrant shall be issued except upon probably cause supported by oath or affirmation, and the place to be searched,"---that's standard---"persons or things to be seized"---now, what I had a hard time with---how do you protect the secrecy? And I said or the information to be obtained? Now, I don't know whether that is---

MR. SINKLER: Better language than this.

MR. STOUDEMIRE: I don't know whether that is the correct phrase or not. I tried four and five and it didn't work out and you have trouble with your "to be's".

MR. WORKMAN: We get up against the practical consideration--to get a search warrant to move into a man's house or automobile is something which you don't put a guy on notice---the search warrant here would put a man on notice that you've going to tap his telephone. I'm trying to rationalize what would be accomplished in this area.

MR. STOUDEMIRE: I think---before we get on here. We might read this first page of Dan's---not his letter, but he brings up on this---

MR. WALSH: Isn't "unreasonable" the key there? In other words, even

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under our federal system they have ruled that for certain purposes where the law enforcement, sedition---

MR. WORKMAN: Sedition, treason---

MR. WALSH: ---protection of the countries involved, a certain amount is permissible provided you follow a specified course in obtaining permission---permission of the Attorney General or somebody like that.

MR. STOUDEMIRE: Is is my opinion that we are going to have to revert back to a phrase, "against unreasonable invasions of privacy" and rely upon the court to develop a history just as it has upon the unreasonable search of your house.

MR. WALSH: I think you're right.

MR. STOUDEMIRE: Because I don't think we can say "electronic" because who knows, ten years from now it might not be electronic. As Dan points in his letter, you got computer, I don't think is quite electronic. See what he's getting at here is that, I think, if the Tax Commission gives a tape to the computer center and they release information from this, along with all the other tapes on me, then I think this would give me the right to have some type of court action that they have violated my privacy without due process of law and so on.

MR. WORKMAN: What our goal is, is to insert into the Constitution that which would give an aggrieved individual a cause for action if the authorities get out of hand in invasion of privacy by whatever means.

MR. STOUDEMIRE: My further opinion, while we don't like to think about amending the Constitution while we're trying to revise it, on some of these things where you cannot look beyond---forever---if, in this wording there be a serious violation, then let the Constitution be amended again.

MR. SINKLER: Now, are we going too far in one direction without giving thought to protecting the populace against criminals. They're going to get into this electronic stuff very quickly, too, if they haven't already done so and I personally would much rather see a few private secrets aired than I would to have the police hamstrung. I think that's one of the great problems we have got in this country today. I'm sure that this is the liberal trend, but just want to---have we thought of the other side of this---

MR. WORKMAN: In New York, Governor Rockefeller moved to get some degree of permissiveness for law enforcement, wire taps and so on.

MR. STOUDEMIRE: The federal courts, I think, ruled out the New York wire tapping provision.



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MR. WORKMAN: Well, I agree with Huger that we've got to try to---

MR. SINKLER: We don't want to just blindly assume that we're going to have a bunch of idiots on the Supreme Court for the rest of the time. Maybe there is some hope there somewhere.

MR. WALSH: I don't think you're hamstringing law enforcement.

MR. SINKLER: I'm not saying you're doing it. I just wanted to ask the question.

MR. WALSH: Matter of fact, most of the evidence seems to point to the fact that the law enforcement people have just simply been doing a sloppy job. That's the principal reason why.

MR. STOUDEMIRE: Huger, I would answer your question---

MR. WALSH: Detectives in Detroit say that nothing in what the Supreme Court has said interferes with law enforcement. It's just that the police were never trained to do a good job.

MR. STOUDEMIRE: Huger, I would answer your question. One thing, that we cannot say what the federal courts would say, but now, to me, from "unreasonable" invasion of privacy, there is still adequate room---

MR. SINKLER: I think you may have it. I'm not fussing with it. I just wanted to throw it out on the table.

MR. STOUDEMIRE: We do go through a court now so that he can search my house if he suspects stolen property.

MR. SINKLER: That's true, too.

MR. WALSH: This would be the same thing, as I see it.

MR. SINKLER: This day of instant communication, that sort of thing. The old system of going to a magistrate to get a warrant, something like that--somebody's got to be able, under certain circumstances, to act promptly and I think you probably said "unreasonable" because I think the court can take "unreasonable" and push it any way they want to do it. I agree with you that this is something that the courts are going to write and not the people sitting around this table.

MR. WALSH: I think that's proper because the circumstances are going to change and what might be reasonable today might not be reasonable in the future.

MR. SINKLER: I think this is an area that, really, should develop and should not be confined to the intent of those who sit around this table.

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MISS LEVERETTE: It is possible, too, that there will be a swing back away from this liberal interpretation.

MR. SINKLER: I don't think you can spell out the thought that I'm trying to have which would protect the law enforcement---I think you've got to cover it with something like "unreasonable". There was a wonderful body of law that was more or less overruled as going in under illegal search procedures and it was there, presumed that they had probably cause. Of course, we'll get back to this one of these days.

MR. HARVEY: You're saying that this does, specifically though, give you the right to obtain information upon obtaining a search warrant, particularly describing what's sought to be obtained in the warrant. It affirms that right or that power.

MR. SINKLER: I didn't want to deny perhaps other areas of snooping that might become necessary, really, to preserve law and order.

MR. WALSH: Under this language, though, wouldn't that permit the General Assembly to specify and set reasonable bases on which it could be obtained.

MR. SINKLER: How have you got that now?

MISS LEVERETTE: Read that, Bob.

MR. STOUDEMIRE: You haven't got one?

MR. WORKMAN: Let me ask you a layman's question on the criminal aspects of this. If an officer of the law, Brantley, gets a search warrant to search Malcolm McLendon's residence. I can go to his residence with that search warrant, serve it on him, come in and search. Now, as we go into the interception or invasion with respect to tapping your telephone, I go to the judge and say for certain valid reasons which I spell out to the judge, that I want a search warrant which entitles me to intercept him telephone communications. Now, am I correct in reading into that that Chief of Police Workman can intercept McLendon's telephone calls so long as I have in my possession that search warrant without serving it on him.

MR. SINKLER: I don't think you can. Because the warrant that enables you to go into the house has to be served and if you are going to have to serve somebody---suppose it's not going into McLendon's house, but suppose it's going to the source of public information which the guy's got reasonable cause to believe that the guy's been jimmying his income tax returns and he's really in a racket---he's really trying to get at the bottom of the racket and do we have to serve the search warrant on the man to go get that information? If you do that you've got no possible change of ever really accomplishing what you want.

MR. WALSH: I don't believe that would be correct for the simple reason that the information you are seeking is already solidified. He can't change it. It's already in the computer and there's nothing he can do to change it---assuming that this is a criminal matter now. You're talking about two different things. If it's a criminal matter, he'd have to have a search warrant. If it's an administrative matter, it would simply go to the reasonableness of the information you're trying to get.

MR. SINKLER: Well, on the basis of violation of the health standards and that sort of stuff, I suppose that could be no real problem there. You could go ahead and serve and if the guy got a rule to show cause why it shouldn't be granted or something like that you could probably get around that in some sort of way.

MR. SMOAK: Isn't the big concern here in the administrative area because criminally it's a simple matter anyway. Either the evidence can be introduced or it can't be. If it can't be---

MR. SINKLER: I don't really---I'm in an area I know little about so I'm speaking purely as a layman in this field. My general reaction to things is that the Supreme Court of the United States instead of helping law enforcement has done everything in the world it can to encourage these racketeer situation which are really getting out of hand. While we haven't got any problems in South Carolina today of any great magnitude, forseably some of our cities and towns could grow to the point where they might bring it about.

MR. WORKMAN: Well, I think our problem is arriving at a language to protect the rights of law enforcement agents and, at the same time, or as best we can, balance the rights of individuals against unreasonable searches. Now, what worries me about the language here, "No search warrants" and so on "shall be issued---or the information to be obtained".

MR. SINKLER: That's what worries me, that last---

MR. STOUDEMIRE: I don't know how to word it.

MR. WORKMAN: What I'm grappling for is to see whether or not in the field of criminal procedure, the law enforcement agent could establish the reasonableness of his interception by appearing before a judge and explaining to him the information which is desired and sought after, and the judge says, this is a reasonable application or invasion because of the circumstances and then the law agent would be-- his interception would be validated without the necessity of serving on the suspect the fact that he is being intercepted. Now these may be conflicting areas here, but once you tell the individual that you are seeking out certain information, you, in effect, defeat the purpose of the law enforcement agent who is trying to get it.



MR. SINKLER: Let me ask you something else here where you get into this business---whether you want to change this thing or not. I agree with the professor that ultimately this is going to be--- something that is going to be written by the courts rather than by any draftsmen, whether they are legislative or constitutional draftsmen, but it seems to me that this really ought to be covered. The man's got his protection, really, under the due process clause and I strongly object to taking the due process clause out of the South Carolina Constitution. I think that sometime you might want to get a South Carolina court decision what is due process in a lot of areas where the federal court would have no concern in it. I'll illustrate it when we get to that, but I'm wondering, really, if you leave the thing as it is and, with the safeguard to the guy who has been badly treated to rely on the due process clause, rather than to spell out here---you are really going a tremendous step forward when you say that you've got to get a warrant to get information. That's what you're doing. Of course information is not too different from stolen goods in one sense, but stolen goods is something tangible and can be---their existence can be obtained and information is probably a composite of everything and why do we want to go anywhere in that direction.

MR. WORKMAN: Let me suggest that we might accomplish what we are trying to do by accepting the first sentence, "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures and" from unreasonable invasions of privacy "shall not be violated". That injects into the Constitution guarantees this element of privacy against unreasonable search. And then pick up with the old language, "No search warrant shall be issued except upon probably cause supported by oath or affirmation, and the place to be searched, the persons or things to be seized---shall be particularly described in the warrant", leaving out there the information because we put in the invasion idea and leave it out.

MR. STOUDEMIRE: What does the word "things" mean? "Things to be seized." Now, I think our courts would say that that would be things---as we look back. Now, would "things" also cover a letter?

MR. McLENDON: Yes, it probably would.

MR. STOUDEMIRE:---or a tape?

MR. McLENDON: Yes.

MR. WORKMAN: Anything tangible.

MR. WALSH: I believe "thing" would include a computer record. I personally feel that the composite information stored on a computer is far more important to an individual than his automobile. Could have a greater effect upon his ability to live a clean life.

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*Search Warrants  
ask Dan*

MR. STOUDEMIRE: Gentlemen, let me ask this. If we could once again delay this, but accept the wording that we have now---strike out "or the information to be obtained" and then add this last thing down here about warrants and let me submit this once again to Dan for his additional enlightenment that he might give to us on this, because we do need, I think---well, we don't have a library here and this whole thing may have to be re-processed.

MR. WALSH: Gentlemen, I move that we adopt the idea that Bob has suggested there and ask the Attorney General for his further comments on it.

MR. McLENDON: With no objection, we will move on then with that.

MR. SINKLER: I may be wrong on the thing.

MR. McLENDON: The next area we left open was what?

MR. STOUDEMIRE: The next thing was this business of Section 17.

MR. McLENDON: Page 8?

MR. STOUDEMIRE: Yes. Now, you remember that, I think we came to a conclusion that we would eliminate---that we keep "grand jury indictment" as a basic statement in the Constitution, but eliminate the amount of money. "No person shall be held to answer for any crime where the punishment exceeds---imprisonment for thirty days". Now, then, we got into this question of whether or not we should allow a waiver, by law.

MR. McLENDON: Of an indictment?

MR. STOUDEMIRE: Of an indictment, yes. And then the question came up was to check the law and see if this could not now be done, so we checked the laws yesterday and the court opinions and so on and I don't find any authority to waive a grand jury indictment in our laws now and I think the <sup>Hand</sup> case would actually prevent this. We checked this out again yesterday. So, if we're correct, then, that brings us back to, really, where we were and, gentlemen, I think, without checking the minutes that our idea was this: that we would leave the wording there, essentially as is, by striking out "a fine of two hundred dollars, imprisonment for thirty days" and so on. We took out "with or without hard labor". And then this would bring us into this additional phraseology.

MR. HARVEY: Now, we left in "imprisonment for thirty days".

MR. STOUDEMIRE: Yes, yes. I think that this is the idea that we agreed upon. Indictment may be waived by the accused when permitted to do so by law. In that case, the prosecution shall be by information, or permitted to do so by the General Assembly or by law.

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MR. WALSH: I think we were going to add a little proviso that the General Assembly could provide when you could waive.

MR. STOUDEMIRE: For some of you who were here last time, many, many states now do allow this to be waived. Some, like Florida, you can waive almost anything, but capital case. Some even allow this, one or two. Most of them do allow a certain amount of waiver, but restrict some of your most serious crimes, and where a grand jury indictment must---

MR. WORKMAN: Why not just a simple sentence, Bob, at the end where you come to "time of public danger" where we were going to break it, you see, to have one section. Just put "the General Assembly may provide for waiver of indictment".

MR. McLENDON: Is that the language he's got?

MR. STOUDEMIRE: It's shorter. The General Assembly may provide for the waiver of indictment. All right then, for those of you who were not here last time, the rest of this thing was essentially kept, but that we would break it down and draw it out and sort of---the subject matter shifts so fast that we would list it as a separate section. And that private property would still stay as a basic constitutional thought. Then we would work out whatever we might want to work out on urban renewal when we got to local government which was the easy out last time.

MR. SINKLER: Let's make this last sentence a separate section.

MR. WORKMAN: It will be three sections.

MR. STOUDEMIRE: It will be 17, 18 and 19. They are all so fundamental that they ought to stand out, really.

MR. McLENDON: We understand that. Where are we now?

MR. STOUDEMIRE: We're down to 21 on page 17. Mr. Chairman, I think this is Miss Leverette's baby. We had some question about libel.

MISS LEVERETTE: Question of the---

MR. McLENDON: Whether the juries shall be the judges of the law and the facts and Sarah was going to research it for us. Why law and facts were put upon the jury.

MISS LEVERETTE: I was surprised to find out, and I guess we all should have know this. This is a basic constitutional provision and it stems from the early practice in the pre-eighteenth century, the practice in England in cases of seditious libel where the jury could only find the fact of publication, the fact of printing. It was up to the judge,

then, to determine whether the matter was libelous. Also, there was no provision for truth as a defense so there was that old battle there between the people and the government and when the jury came in that they could only find the facts, then the judge could declare it libelous, the judge being a part of the government, they were opposing each other. So, under Lord Campbell's Act, the provision for truth as a defense was added in cases of criminal libel, seditious libel as it was concerned with. Also, under Fox's Law which came in about 1792 in England, the provision that the jury would decide the whole general issue of law and fact in this particular type of case. So, what it boiled down to, it was a protection of our first amendment, Federal Constitution, First Amendment, Freedom of the Press, really. So that the jury would have, well, the people would be in a position to criticize the government as long as it is not done with malice. In the interest of public welfare they could do so without of fear of being slapped down by a judge because he had the ability to just wipe out whatever they had said. So it is really a protection of a basic constitutional right that, generally speaking, is now included in our First Amendment, Freedom of the Press, and my feeling is that, in view of the fact that in a recent case, the Rosenblatt case, Justice Black in a concurring opinion---it was a case in which the definition of a public official, the villification was against a person running a county ski resort so the question was whether or not this person was a public official under the circumstances and the majority opinion stated that the court in the first instance could determine whether this person was a public official or not. And Justice Black, though concurring in the opinion, made the statement that he feared the use of that term "in the first instance" may later be forgotten and that we would begin to veer back into this business of taking away from the jury this right to make this determination, conclusion as to whether this---a person was a public official. So that was a 1966 case and in view of the fact that they---we might have to leave this thing, say, we say, all right, the first amendment takes care of it. I suppose it does in a general way, but to protect people like Mr. Workman, people like that, I think that possibly it might be advisable in there. I wanted to ask Bob what one of the issues in the New York Constitutional hassel, I guess it was, was whether or not they would retain that. Most of the states have at one time had this provision. Do you know whether they did or didn't?

MR. WORKMAN: I think that your explanation gives greater validity to this, a reason for keeping it in. I wonder whether or not we would improve the public understanding of it if we simply put in there for criminal libel. When you say "all indictments or prosecutions for libel"---"indictments" and "prosecutions", those two terms might be criminal, but libel in the sense of the ordinary citizen these days is not criminal libel, it's civil libel. I was wondering if the insertion of the word "criminal" would be worth putting in for that little clarification.



MR. WALSH: Bill, the only thought that occurs to me is that our State Supreme Court has already said that this applies only to criminal. It seems clear that that's what it applies to now. Maybe it's best to leave it like it is.

MISS LEVERETTE: I believe in the attempt to pin that down, Bill, we might rock the boat a little bit.

MR. WORKMAN: But we've got two considerations all the way through our deliberations. One is to do as little as possible which is going to disrupt existing case law or procedures. On the other hand, realizing that whatever we do is going to have to be sold to the public to make it as understandable as it can be to the layman---that was the only---

MR. SINKLER: Good point. The only point I had, you might, perhaps, somehow or other break into sub-sections of this Article I, areas which are dealing purely with criminal matters and have a little sub-heading to so indicate. In other words, for instance, 17, you were talking, as it is now written, you start talking about property rights and you put all these things together. Some sort of sub-heading that I'm sure Bob could think of, you'd get your thought across and you wouldn't disturb case law which is what you don't want to do and which I think is a point well taken.

MR. STOUDEMIRE: Actually, we might be straining at gnats because nobody's concerned about this, but people like Workman anyway. Really, I don't think this a thing that the citizens of South Carolina get disturbed about even though it's in the Constitution.

MR. WALSH: If you change it, they might ask why. I believe we ought to leave it in.

MR. MCLENDON: That's right.

MR. HARVEY: From what you said, wouldn't the same thing be accomplished if you said, "the jury shall decide all the issues of fact". Because actually what you're saying the old English law, the judge deciding whether it was or was not libel, that's not a question of law.

MISS LEVERETTE: Well, my interpretation---there are some conclusions of law in there, too. The jury would decide whether or not it was defamatory and also whether it actually has been published and printed, but the judge, he still has the right to make an advisory charge, but it would seem to me that you could conceivably have instances in there where it would be a conclusion of law, not the facts.

MR. SINKLER: But the criminal case has got to go to the jury anyway. This, really---I think your background was very---it really goes back

to a situation where the English judges submitted special issues of fact and then they took over from that point on and all this does is to make the whole case to to the jury.

MR. McLENDON: Make the whole thing a jury matter.

MISS LEVERETTE: Instead of special verdicts.

MR. WORKMAN: I move we keep it as it is.

MR. WALSH: Second the motion.

MR. McLENDON: Any objection? If not, we'll accept it as proposed. Well, Bob, where are we now?

MR. STOUDEMIRE: We're at Section I, 28 and if you've got the State Constitution, it would be easier just to refer to Article XIV.

MR. WORKMAN: It's right after page 22 of section relating to elections.

MR. STOUDEMIRE: Gentlemen, last time, I think the concensus was that we were concerned about letting the navigable waters remain free, public highways. Also, some opinion was that the whole article on eminent domain really guaranteed nothing that was not already a right of the State and there was some discussion as to whether or not just to throw 14 in the trash can and forget about it, with perhaps leaving some type of a statement on navigable streams being free highways in the Declaration of Rights. But after some discussion, as you recall, you asked me to consult the Attorney General on this and which he has replied here in his letter and over-all he says this, that with the tidelands and all these things now, he would hate to see all this stuff go by the wayside. Secondly, he thinks it is a constitutional statement to repeat the phrase, "navigable streams, free public highways" and in the third place, on this business of title to certain lands and ultimate property in lands, that if these weretaken out, even though the courts say they don't guarantee anything that the State doesn't naturally have, that this may start a new flow in the law of people thinking that these are no longer of value and that really the constitutional delegates or amenders, whatever you want to say, really were thinking in terms of making some changes. So, as I look over this and taking his recommendations into view, I, 28 and Section I, 14 actually say about the same thing. Only I, 14 brings in the boundary rivers and it is my feeling that to eliminate I, 28 and leave Article 14 as it is. Even though we might decide later to place the whole thing somewhere else and not have a section on eminent domain.

MR. WORKMAN: Let's see, Section 28, "all navigable waters"

MR. STOUDEMIRE: "----shall be free" and so forth and so on. Now, you come over here to Section 1, XIV, "The State shall have concurrent jurisdiction on all rivers bordering on this State, so far as such rivers shall form a common boundary" and so on "and they, together with all navigable waters" you see. That picks up your I, 28, "within the limits of the State, shall be common highways and forever free, as well to the inhabitants of this State as to the citizens of the United States, without any tax or impost therefor, unless the same be expressly provided for by the General Assembly". This would give you the right to charge a dockage or whatever, you see.

MR. WORKMAN: You, then, would omit these specific references to tax, toll, impost or wharfage.

MR. STOUDEMIRE: Yes. You come back in, you can still say the General Assembly can over-ride it.

MR. WORKMAN: They can put any kind of tax or impost on they want.

MR. STOUDEMIRE: And then I would think, perhaps, you might even put two and three together in one section. Eliminate 3 and just pick up there somehow or other. Actually, I haven't worked it out carefully and let us decide, perhaps, when we get through---in other words, if you agree that they ought to stay or not stay, then when we get through we can determine if we still need an article on eminent domain or whether these things will go in a miscellaneous section or what have you.

MR. SINKLER: Three really is redundant, isn't it?

MR. STOUDEMIRE: Yes, and the court says that it doesn't give you thing but what you already have. The Attorney General, for whatever his advice might be worth, says that he's afraid that if you take it out, it might try to influence someone that you are changing policy.

MR. WORKMAN: The recommendation would be to delete Section 28 of Article I on the assumption that all of its provisions are incorporated within Section 1 of Article XIV.

MR. STOUDEMIRE: That's correct.

MR. SINKLER: Not entirely because you've got this very important thing. It made me think about the State Ports Authority revenue bonds. Under 28, "no charge shall be made for the use of a wharf"---that's how the things are supported and you don't have that thought over here in ---

MR. STOUDEMIRE: Yes, you do. We've got "----without any tax or impost therefor, unless the same be expressly provided for by the General Assembly".



MR. SINKLER: I guess you're right

MR. McLENDON: Why do the two sections describe rivers differently? One says, "common highways", the other says, "public highways". Is there any point in describing them differently?

MR. WORKMAN: I can tell you the reason, probably. Because in the inception in 1895, they had a whole flock of committees working on the different articles. As these things would come out, the wording, one from the other, would be somewhat different although the intent was the same.

MR. STOUDEMIRE: Now, Mac, my feeling is that if we keep XIV and pick up the word "public".

MR. McLENDON: Rather than "common" I think so, too.

MR. HARVEY: Common boundaries is a proper use of the word.

MR. STOUDEMIRE: All right. Can we agree on that tentatively?

MR. McLENDON: Can we agree on that tentatively? Anybody else got any---

MR. STOUDEMIRE: I might say this. I did check out Michigan and New Jersey which are, really, fairly recent expressions and they have left in their Constitution this old---they might have it worded differently---this thought of---

MR. HARVEY: Rivers being free---

MR. STOUDEMIRE: No, two and three down here where "the titles finally rest" and so on.

MR. WALSH: I think it's rather important that you leave that in.

MR. McLENDON: Bob, does that take care of the hang-over?

MR. STOUDEMIRE: No, we've got more. Now, let's go to elections, gentlemen. Section 2, Article IV, which is page 5.

MR. McLENDON: Of the second memorandum.

MR. STOUDEMIRE: Now, you remember last time, I think we finally agreed and, gentlemen, when you get your minutes this is going to be about 30 pages---where we agreed, disagreed, come back and re-agreed. Now, I think the final agreement was this---

MR. McLENDON: What are we talking about now, Section what?

MR. STOUDEMIRE: The agreement was that the residence for State shall be six months, the county three months and the polling precinct in which the elector offers to vote, thirty days. This was what you agreed upon. Now, you worried a little bit about the phraseology and this is one of the things that McLeod commented on which I didn't ask him to. He says that we ought to leave in here that "a man must vote in the precinct where he resides". Now, I don't know whether that be necessary at all. Because it seems to me that "polling precinct in which the elector offers to vote" sort of takes care of that. Doesn't it? All right, "polling precinct in which the elector resides and offers to vote"---

MR. SINKLER: Do you know what purpose that is?

MR. STOUDEMIRE: What?

MR. SINKLER: To prevent them from having the election for the governor on the steps of the Capitol and make everybody come to Columbia was the purpose and thought back of that. Verner against Mullin discusses that. The lake and the reservoir at Greenville did away with a few precincts. On one election up there, they had to spell out those who had lived in the old precinct, they shall vote this particular place, but the idea is to keep some legislature from passing a law saying that if you want to vote for the governor, come to the steps of the State Capitol. That's all.

MR. WALSH: I think it's a good idea, but on the other hand, it would make it very inconvenient for a lot of people to vote.

MR. STOUDEMIRE: Gentlemen, let's leave that for a moment for we've got another question here. "And in the polling precinct in which the elector offers to vote for thirty days". Now, this is your phraseology of the existing constitution and the way this came up last time, I think it was a discussion on whether or not a man had to live in the State six months before he could register or whether he could register in anticipation of being here six months.

MR. WORKMAN: At the time of election.

MR. STOUDEMIRE: Yes. Now, it is my feeling when you've looking at the law---Mr. Lindsay brought up the thing about North Carolinians coming in and so on---now, it is my feeling that a constitutional provision still does not protect you from a crook unless someone is there to enforce it. The law now says, when is a man twenty-one? Now I believe it hinged on---in other words, he can vote if he is twenty-one by general election day, I believe. Also, and the law now seems to be---it becomes a question as to whether or not a man must be in the State six months before he applies or six months from the date of the election. Really, this is a thing that can be taken care of by statute and I would propose that we leave our historic language alone down to that point and then worry about

whether or not one ought to live in a precinct as a separate item. In other words, "residence in the State six, county, three, and voting precinct in which the elector offers to vote, thirty days" is the way it reads after you cut out a little of that excess jargon.

MR. WORKMAN: Well, I brought up last time---it kind of leaves it open-ended because you don't have a reference point. From what point backwards do you date six months, three months and thirty days?

MR. STOUDEMIRE: Well, this is what I would leave up to law.

MR. WALSH: In other words, you think where we put this in and if there is any confusion about it, let the General Assembly clarify it in the election statutes.

MR. STOUDEMIRE: We have done this now, especially on age, you see. And actually whether I've been here six months is no more important than as to whether or not I can vote in the next general election because I'm now twenty and won't be twenty-one until the first day of November. That's the way I see it. Let me ask you this. This would not prevent the General Assembly passing a law saying that a man must be in the State six months before he can apply, would it?

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

MR. SINKLER: As it says, qualifications for suffrage, does, in my opinion, give you a reference point.

MR. HARVEY: Qualifications for elections.

MR. STOUDEMIRE: I'm willing to let it be argued.

MR. WORKMAN: If it gives the general election as the reference point--say, now---take arbitrary three months or six months---doesn't make any difference. If the general election in November is the reference point, then if a person becomes registered to vote on the expectation of having achieved that residence by November, can he then vote in the primary which occurs prior to that November election?

MR. SINKLER: I think the court has said he could, but I don't think he's justified.

MR. WALSH: That's what I think, it seems to me, that the General Assembly ought to clarify. If, frankly, don't think he ought to.

MR. STOUDEMIRE: That's the reason I left it to the wisdom of the General Assembly to clarify it.

MR. WORKMAN: I think we're dodging the issue, Bob. If we, constitutional

drafters, are going to say that these periods of times are desirable or we think that they are proper, then we ought to say---ought to apply that propriety to some fixed period which tells the General Assembly that you go ahead and regulate this, but we think that six months is necessary and we ought not to leave it open so that they can say, well, we're going to let it be, instead of six months, it's going to be three months.

MR. SINKLER: I have no fixed ideas on it, but sort of agree with you. You do it very simply by qualifications of suffrage as to any election.

MR. WALSH: I was wondering if ---

MR. SINKLER: Qualifications for suffrage as to any election shall be as follows. I don't care how you do it. That gives you a few words.

MR. WALSH: Why don't we just let Bob try to word that so as to put that idea in that it be six months before an election.

MR. STOUDEMIRE: Six months prior to the election?

MR. SINKLER: No, no. You have it in suffrage as to any election.

MR. STOUDEMIRE: All right. Your idea still is, then, six months before the election and not six months in order to register. Your idea is to let the election govern and not registration date.

MR. HARVEY: Just the words, "prior before registering".

MR. SINKLER: Well, I think the qualifications for suffrage as to any election. You might improve it still further by putting the word "prior".

MR. STOUDEMIRE: Now, gentlemen, we struck out Section 9 which deals with polling precincts and the Attorney General, on his own---I didn't ask him, says that's O.K., but he thought that we ought to keep a thing in there that the elector shall be required to vote at his own precinct.

MR. SINKLER: Why?

MR. STOUDEMIRE: Section 9 on page 16, read down there, beginning with the sentence "each". He thought it was immaterial, like we thought, that the General Assembly could provide polling precincts anyway.

MR. WORKMAN: Now, before---this relates precisely to what we're talking about, qualifications for suffrage, "precinct in which the elector offers to vote". Should we not hold that in abeyance?



MR. STOUDEMIRE. I was thinking, if you buy that idea, could it just be added here as a sentence?

MR. WORKMAN: Yes. Back up in Article II, Section 4.

MR. SINKLER: I think the thought is desirable although transportation isn't as difficult as it used to be.

MR. WALSH: The only thought I wanted to make and I, frankly, think I must be a minority of one---the whole State and I see it happening in urban areas, you say, here's a precinct, here are a lot of people and there isn't a nice, decent place in the whole area for them to vote. They have to go out of the precinct to find a place that they can conveniently vote.

MR. SINKLER: What you're trying to do is to protect people against extraordinary circumstances. Your reference to Mr. Lindsay's reference to North Carolina people coming in to vote. Suppose you had a situation where some political machine which weren't in favor of, said, well, we'll let them vote, we'll let them vote at the court house and we'll line them up and march them through and you could get hours and hours and hours. I think as long as you make them vote at their precinct, you can complain enough to the General Assembly and you'll get some relief. I stood in line for five hours to vote for Goldwater and that was true in Charleston, generally.

MR. WALSH: There just isn't any place to vote.

MR. STOUDEMIRE: Each voter shall be required to vote in his own precinct---would that necessarily---You're still voting at your precinct but it has been removed.

MR. WALSH: That's what Dan ruled---

MR. SINKLER: There's a great deal of confusion in the law when you go to these precincts, some of these sections---a precinct to my mind is a geographical area. A voting place is the place within the precinct at which you vote and I think when you use the word "at" is a very poor choice of words. I think the thought here is you vote "in" your own precinct and "at" a voting place. So that's---the use of the word "at" in this 9, slops over into this whole question of precincts.

MR. WALSH: Bob, what do they do in other states? Do they have requirements?

MR. STOUDEMIRE: Generally, no.

MR. WALSH: I think the increased urbanization of the State is going to increase the problem of voting in the precinct.

MR. STOUDEMIRE: Your newer expressions in state constitutions just fixes the bare minimum of who can vote and puts a period.

MR. SINKLER: I'm sympathetic with you, but I, also, don't want to leave this thing so loosely worded that you could require everybody to vote in a courthouse because when you've got the wrong set of people in there---

MR. WALSH: I think you have a very good point there.

MR. SINKLER: That's the thought back of this particular thing.

MR. WORKMAN: An additional thought, by having people register in and vote in the precinct in which they live, there is more probability that the election officials of their precinct are going to be familiar with these people than if they vote elsewhere.

MR. SINKLER: Less fraud.

MR. STOUDEMIRE: Gentlemen, could we do it this way? A separate voting place must be provided for each precinct---some thought like this.

MR. SINKLER: Don't put it quite that bad.

MR. WALSH: It may be that it ought to be left like it is. I know what problems we've had.

MR. McLENDON: The General Assembly has got an election laws study committee that worked off a good bit of that last year and they are into it now and I think they're going to cure the problems.

MR. WALSH: It may be, but, Mac, for instance, the one I'm in, they just haven't been able to find a place to vote and yet 100 yards from the edge of the voting precinct is a recreation hall.

MR. WORKMAN: No problem. Put it in the precinct.

MR. WALSH: That would take an act of the General Assembly.

MR. WORKMAN: That's no problem, either.

MR. SMOAK: I really think they ought to be required to vote in the precinct. I think, one thing, you know most of the counties of South Carolina do not have, right now, specific definitions of precincts and this is something that should be done, also. Several of the counties have done this in the last couple of years. We did it in Aiken County. It's a big job, but it is one of the most helpful things you can do to have specific definitions, say the boundary of such and such a precinct is this road and this street, on the North side of this street. When you get that thing specifically made out

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that way and also reduce the sizes of your precincts so that you would only have, not in excess of 800 or 900 people in any one precinct, begin to get control of this thing and the orderliness that will follow is extremely helpful.

MR. McLENDON: Emmet, we have---

MR. WALSH: It may be that the whole answer is that the General Assembly needs to study and do a job of realigning the precincts.

MR. McLENDON: We have a city problem in Marion where we have two precincts, one divided by Catfish Creek. And outside of Catfish is rural area and yet there must be a 150 people who live in that precinct and almost 75 of them vote over in the City of Marion box. It gets kind of rough because the people holding the polls, they don't know whether Richard Fox or John Brown or Bill Jones, who is registered right here to vote walks in there to vote, whether he lives out there in Wahee or not. It creates a problem.

MISS LEVERETTE: Don't you think that is sort of a housekeeping type of problem?

MR. SMOAK: I think it is.

MR. WORKMAN: Let me suggest that Section 9 be retained with the change of the word "at" to "in", "be required to vote---"

MR. STOUDEMIRE: You mean that sentence, not the whole section.

MR. WORKMAN: Section 9.

MR. STOUDEMIRE: Just the sentence. You see Dan says, "establishment of polling precincts need not be a constitutional mandate and the requirement that the elector vote in his own precinct should be retained".

MR. SINKLER: Well, I think you'd better get the thought across that the precinct is a geographic area, rather than a place at which a person votes. I would probably like to leave it in there with geographical delineations defined.

MISS LEVERETTE: This doesn't set that.

MR. SINKLER: In other words, I'd like to see it "the General Assembly shall provide for the establishing of polling precincts in the several counties"-you don't even have to have it "in several counties of the State", but I guess you do want to keep within counties. You certainly don't need "of the State" in there--- with geographical boundaries delineated or defined.



MR. WALSH: You might say according to specific boundaries.

MISS LEVERETTE: Couldn't you say, "the General Assembly shall provide for the establishment of geographically defined polling places?"

MR. SINKLER: Fine.

MR. STOUDEMIRE: Now, do we need to keep in those "now existing"?

MR. SINKLER: I don't think you need that.

MR. WALSH: Should we say, "reasonable size"---

MR. SINKLER: Why don't you simply say, "there shall be established by the General Assembly"?

MR. WALSH: The point you're making is a very good one and that is by getting them of reasonable size, rather than having one with 3,000 and one with 100. That's what, I think, creates a lot of the problems that we have had.

MR. McLENDON: I think we're doing that General Assembly-wise now in the Election Laws Study Committee. Last year's work and this year's work.

MR. WORKMAN: May I make a suggestion as to wording here? "That the General Assembly shall provide geographic boundaries for polling precincts in the several counties and each elector shall be required to vote in his own precinct".

MR. SINKLER: Why don't you say, "there shall be established" so as to eliminate the thought that you have to re-establish them by new action of the General Assembly? We don't have any question as to whether these precincts you've got now are good or bad.

MR. WALSH: Well, wouldn't you have a saving clause at the end of the Constitution?

MR. HARVEY: "Provide for establishing" and "establishing" is a little different, too. Now, this "provide for establishing" could mean they could delegate that authority to county boards or county government.

MR. SINKLER: I think you've got a point there.

MR. SMOAK: I think that would be a very bad thing because in most cases, you have other definitions. Sub-divisions of government that will depend on these voting precincts, too, one way or another.

MR. SINKLER: I think you're quite right--the both of you are. One of the Tillman thoughts that we had the black majority in the lower

counties and the General Assembly had to do everything. That's Tillman language, "the General Assembly shall provide".

MR. STOUDEMIRE: Would you be willing to take out "in the several counties"? As we look to the future, counties may not be what they are now. Regions, it looks like, may be far more significant.

MR. McLENDON: Richland and Lexington.

MR. WALSH: Spartanburg and Greenville already have got common problems.

MR. STOUDEMIRE: You would assume that they would do it by counties.

MR. WORKMAN: Well, it gets back to what Huger thought of several times. In the establishment of voting precincts, we don't want a precinct of such size to be established that people would be required to take a year to do something.

MR. SINKLER: Let's go with the counties as they are now. Let's don't abolish the counties right yet.

MR. STOUDEMIRE: This is 1967. If you have your Constitution where counties must be. I mean, I'm not abolishing counties, but I do feel strongly that the wording ought to be such that something else could be substituted.

MR. SINKLER: Well, until you abolish counties, haven't you got problems just as you've got in the City of Marion. Now, let's take Hanahan. Hanahan is an unincorporated area with ten or fifteen thousand people in it. To somebody flying over it, you would think it was one of the more thickly populated sections of North Charleston. Actually, it's Berkeley County. Now, if you're going to have a Hanahan precinct or a North Charleston precinct which would take in Hanahan, then you'd have great confusion as long as Berkeley County has got any significance left. There ought to be some simple method of keeping North Charlestonians from going up there and voting and vice versa.

MR. STOUDEMIRE: Let's leave it as it is now because the nature of counties---really, we can't decide now until we decide on what local government is. Would you read that?

MR. WORKMAN: My language would read something of this nature, "The General Assembly shall establish geographic boundaries for voting precincts in the several counties". There would have to be a period there. "Each elector shall be required to vote in", rather than at, "in his own precinct, but provision shall be made for his transfer to another precinct upon his change of residence". Now, if you want to leave out the change of residence which would, conceivably, open up a person---no, "is required to vote in his own precinct."

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MR. STOUDEMIRE: Another detail of election that's got to be left to the Legislature.

MR. WORKMAN: Wait a minute. "Each elector shall be required to vote in the precinct in which he resides" is the thing that we want to get in there.

MR. WALSH: That's what you really want.

MR. SINKLER: Just leave that language.

MR. STOUDEMIRE: "In which he resides".

MR. WORKMAN: "But provision shall be made"--

MR. SINKLER: You don't need that.

MR. McLENDON: All right, gentlemen. Are we satisfied with that language?

MR. SINKLER: What did you do with 11?

MR. STOUDEMIRE: Struck it.

MR. SINKLER: What did you do with 13?

MR. STOUDEMIRE: 12, struck.

MR. SINKLER: 13 is awfully confusing.

MR. STOUDEMIRE: Struck it---well, ---

MR. McLENDON: Sooner or later we'll get to the taxation section.

MR. SINKLER: That should be struck.

MR. HARVEY: Bob, go back to page 5, if you don't mind, "Qualifications for Suffrage". Now, registration---

MR. STOUDEMIRE: We said that should be,---our wording there---all right, "the General Assembly provide for a reasonable literacy test, determine ability except for physical cause"and so on, based on the English language and then on Registration, we said, "that the General Assembly may establish registration periods, not less than ten years"---was what we agreed on, wasn't it?

MR. HARVEY: I think I have a note on that. I thought that was what we said.

MR. McLENDON: Not less than---

MR. STOUDEMIRE: We wanted to bring in the ten year, but let the General Assembly expand it to permanently if you want to.

MR. HARVEY: Thinking about permanently. Not to make it a burden.

MR. STOUDEMIRE: Gentlemen, left over from last time, too, was this section on administrative law and procedures. Since this time Professor Abernathy says that this thing is really so very, very involved, that it involves so many court procedures, so many administrative procedures and so on, that he feels very strongly that this thing deserves some detail attention which he would like to give and, with your permission, I'd like to just say that we would take this up at some later date. You see, Professor Abernathy is doing a paper on the courts which is due three weeks from now, so I told him to tend to his courts and that we would do the administrative law thing later. He sees a fifteen or twenty page study. If you want to make sure how this thing would affect us, whether or not due process of law is all you now need---a whole bunch of things.

MR. WORKMAN: Well, it would be my recommendation that we have that study made because no matter what happens to it, while it is something we are working on, I think it is something that the State of South Carolina needs to be done, knowledge gained.

MR. McLENDON: A chance to find it out.

MR. WALSH: I think it's an excellent opportunity.

MISS LEVERETTE: By that same token, it's something that needs a lot of attention.

MR. STOUDEMIRE: Gentlemen, going back to today's agenda.

MR. McLENDON: I believe that clears up all of our matters that were hanging over.

MR. STOUDEMIRE: There may be one or two others.

MR. McLENDON: Now, on this agenda that Bob has prepared, here---you have some other ideas about the order in which you want to take it.

MR. STOUDEMIRE: I was thinking it might be easier if you could sort of reverse the order and start here with Corporations, Education and Charitable---I think I made Charitable and Penal first.

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Break



MR. McLENDON: Let's start out on page 2.

MR. STOUDEMIRE: On page 2, gentlemen, will have no bearing on our discussion, really. I didn't get this statement quite---Section 1, "mentally ill" takes the place of "insane" and down in the next section, they say "7 members" and call them the Mental Health Commissioners, but, in essence, it's all the same thing. Technicalities. They left there the matter of the physician in charge and all the power he has and so on. Gentlemen, I've tried to point out to you--- I think that 1895, they must have been writing this Article to correct things that they'd got disturbed about. You will note that the Constitution gives the Charitable and Penal and Mental and reformatories, but they didn't say anything about highways, welfare, as we now know it, wildlife and natural resources and so on. And the way I read Article XII, in effect, you see, that the delegates then were really concerned about the poor, the mentally ill and the treatment of prisoners.

MR. SINKLER: I think you had a real scandal out here at the State Hospital in those days.

MR. SMOAK: Well, these are the things that they were concerned with.

MR. STOUDEMIRE: To translate this into modern terminology, then, very few states treat these things to the length that we treated them in 1895 and the general philosophy---course, as you all know, this is a thing that the General Assembly can regulate anyway and so some states omit all this altogether. Others just sort of give the General Assembly a mandate that it shall provide by adequate law for anything you want to list. That, in a nutshell, is where we are. As you look over these sections, I don't think there are any vital rights protected in any case. For instance, in the reformatory, but we've tended to that already and so on. As I read Section 2 on the board of what's now the Board of Mental Health Commissioners---the second part of that seems that it might even interfere with having a state-wide civil service system if the State Hospital complex did not want to do it. Also, it gives them powers over mental health. I don't know what, if the Board of Regents of the State Hospital now would bring a case that mental retardation was mental health, I don't know whether that separate board they created last year would stand or not.

MR. WORKMAN: What's your feeling as to what would be the proper disposition of this whole Article, Bob?

MR. STOUDEMIRE: My feeling is, first, that we might think up an idea about shall we mandate the General Assembly, that "it shall provide adequate" for certain things, you see. And leave that open-ended as to what all we should add to that eventually as other things might come up, with the understanding that we probably would want to treat education as a separate article which seems to be the way it's done everywhere. The emphasis that we now give it in our Constitution,

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the emphasis that we now give it---I mean with our appropriations and everything else, education might still need to be a separate article in the Constitution. Or you could bring it under---

MR. WORKMAN: Let me suggest this as---

MR. SINKLER: You're right. There's nothing here that's worth a damn.

MR. STOUDEMIRE: You other people agree with this?

MR. WORKMAN: If we want to impose on the General Assembly the obligation of providing in certain areas that we have spelled out, that could well be done under the Legislative Department and not have a separate section.

MR. STOUDEMIRE: Turn on page 5.

MR. SMOAK: Let me ask you one question. Why do you suppose they'd put a section in here like this Section 6 authorizing the use of convicts on public works of the State?

MR. STOUDEMIRE: To keep them from being used privately, I think.

MR. SINKLER: That's exactly the purpose of that.

MR. SMOAK: Says "may be employed on the public works of the State".

MR. STOUDEMIRE: I think they were just sort of giving how they felt.

MISS LEVERETTE: There's another provision in there on Section 9 that says "they shall not be employed by---".

MR. SMOAK: Surely, there was nothing to prevent them from being used on the public works of the State.

MR. WORKMAN: No, but there was a long period, not necessarily in American history, but in history, generally, when a guy once imprisoned, he was stuck in a cell and forgotten. This open up the area to get productive work out of these people on the roads, on whatever area that the State determined that they could be useful. And it was back in this period that they were beginning to work on the roads, road gangs and everything else. Rather than just put them behind bars and keep them.

MR. SINKLER: Then, the labor movement was also very fearful that they might be used in competition with private labor.

MR. STOUDEMIRE: It is my feeling that if we get a graduate student at the University to write a paper on Cole Blease revisited, we really might find that he was far ahead of his time in turning loose half

of the penitentiary, but, as you remember, it was very much of a political issue that he got paid and so forth and so on.

MISS LEVERETTE: Regardless of his motives.

MR. WALSH: Well, you know there was a great deal to do with that. For instance if some city made this study, arrested everybody---you know this question of bail bonds and they decided that they would just have every fellow arrested tomorrow morning and make a little examination and ask him what his job is, let him out, will he go back to work. They found out that more people came back if you let them out on no bond than if you let them out on bond so sometimes like you say, Bob---

MR. HARVEY: I think just a general statement that "the State shall provide".

MR. STOUDEMIRE: Look on page 5 and let me show you how Kentucky did it. It's too wordy, but on page 5 of this working paper, is the way Kentucky summarized and they had lot of the same type of stuff we had in the old constitution. They say, "The health, welfare, and safety of the lives and property of the people of this state and the conservation of its natural resources," and I think this next ballyhoo can be left out "are matters of public concern." The General Assembly shall establish by law appropriate agencies to provide for these matters of public concern and fix the respective functions, powers, and duties of such agencies. The General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education and rehabilitation of the inmates". Now, you notice that we, in South Carolina, our Constitution now has nothing to say about natural resources except eminent domain provisions and so on.

MR. WALSH: Game wardens.

MR. STOUDEMIRE: Yes. We've got a game thing in there.

MR. WORKMAN: It just forbids special legislation.

MR. STOUDEMIRE: That is an approach that you can take.

MR. SMOAK: What's the effect of that "rehabilitation of inmates" there? Is that going to require action in that area for all prisoners?

MR. STOUDEMIRE: Let's read it carefully. "And shall provide for rehabilitation of inmates".

MR. SINKLER: That's a prayerful thought.



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MR. WALSH: I think what it means is that in the program they will provide both the custody and rehabilitation to those that can be rehabilitated.

MR. STOUDEMIRE: Now, I called MacDougall and MacDougall has to do, similar to what the Board of the Regents---you know we passed some years ago that we shall now have a board of mental health commissioners, so you see, to get around some of this constitutional phraseology, they had to say, we now have a Board of Corrections and get around the use of the word "penitentiary" you see, which is outdated. Board of Corrections, 15 years from now might well be outdated.

MR. WORKMAN: Bob, did you make any inquiries to determine whether or not the elimination of these various sections in Article XII would have any effect on what's now being done. Any annotations in that, Sarah?

MISS LEVERETTE: I don't think there is anything.

MR. STOUDEMIRE: Gentlemen, I think I've already told Bill, talking over the telephone. What I shall try to do is keep a list of things we may take out so that then we would have a running tabulation of what the General Assembly would have to re-enact in a hurry if it is not already on the books. For instance, if we take this out which now says "the seven member mental health commission". I'm sure they have already followed that up with statute, but just in case it isn't then, you see, "a seven member mental health commission" would have to be of primary concern to the next General Assembly to get it back on the law. Let me say one more thing by way of propaganda. A number of people now feel, and I think maybe quite correctly, and you see this is in the plans of this organization now, that as we look to the future, we'll probably go back to the term "health" and not even "mental". In other words, that there will be a Director of health, say for the State of South Carolina. These things now are becoming so intermeshed that sometime in the future the State Hospital might well come under the over-all health director. Personally, I think this will be way, way off, but it does show you that some of these things are changing so fast, to pinpoint the State Hospital, to pinpoint the State Penitentiary by Constitution probably would lead us right back to where we are.

MR. SINKLER: Of course, the State Hospital was a tremendous venture for any state to take.

MR. WORKMAN: What does the model Constitution say in the subject of charitable and penal institutions?

MR. STOUDEMIRE: Nothing, or if it is it is such a general broad statement that it amounts to nothing. I don't think it even mentions this whole thing.

MR. WORKMAN: Actually all we need is just a general mandate that the General Assembly will concern itself with these problems.

MR. STOUDEMIRE: Since the last expression we've had in the 1895 Constitution that they really were so concerned and I sort of feel that we still ought to show a concern, but only in a broad way so as not to restrict unnecessarily.

MISS LEVERETTE: Would it shake anybody up, where they've got this provision on wildlife, soil and so forth? If you leave that in there, wouldn't that shake up some people?

MR. McLENDON: Better take that out.

MR. STOUDEMIRE: Sarah, what I did here "---and the conservation of its natural resources" and then jump down to "are matters---". Strike out "including but not limited to wildlife, soil, minerals, forests, water and pure air".

MR. HARVEY: When I said I liked it, I meant without that, Sarah.

MR. SINKLER: To answer your question. Probably a little background---I'm sure you have thought of this. In connection with the language in this Constitution, you had (get into my little baliwick) about 1890 the idea that the General Assembly notwithstanding that it was supposed to have plenary power, really didn't have any power unless the Constitution said it did have power. I'll illustrate that. In 1890 the City of Greenville was trying to get what is now Duke Power Company to come in and provide electric lights on Main Street and Duke's predecessor didn't think it was an economically feasible thing so the City of Greenville to provide electric light undertook to issue bonds and that, itself, wouldn't pay for expenses so they decided that they would furnish not only electric light to light Main Street, but that they would sell electricity to the houses that were on Main Street and the courts struck it down. They said, "My heavens, the City of Greenville now has got horses for the fire engines. Next thing we know they'll be in the blacksmith business." That's actually in one of the dissensions. So, with the background of a couple of cases like that, these guys who sat down here and wrote these things felt that they had to define areas so when you find a provision like this, "the General Assembly shall" do so and so, they didn't proceed from the theory that we're proceeding from---that all powers are in the General Assembly unless circumscribed here. They felt it was necessary---at least they were fearful that it was necessary to give them the power. So, this document really is a product of a philosophy which did not believe that the powers of the General Assembly were plenary.

MR. McLENDON: What does it mean---I can see where you can have an appropriate agency for health, an appropriate agency for welfare. What would be an appropriate agency for the safety of the lives

and the property of the people?

MR. STOUDEMIRE: Highway Department on traffic or anyway you want to--- urban renewal.

MR. WORKMAN: Public Service Commission.

MR. McLENDON: Do we agree that we shall take this Kentucky language, striking out the third sentence and three words on the fourth sentence? Striking out "including by not limited to wildlife, soil, minerals, forests, water and pure air". Strike out the comma behind "resources". Is that what we're talking about?

MR. WORKMAN: How about running through that again as you've got it Bob?

MR. STOUDEMIRE: "The health, welfare, and safety of the lives and property of the people of this state and the conservation of its natural resources are matters of public concern. The General Assembly shall establish by law appropriate agencies to provide for these matters of public concern and fix the respective functions, powers, and duties of such agencies. The General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education and rehabilitation of the inmates."

MR. McLENDON: All right, any further comment on it?

MR. STOUDEMIRE: My feeling would be that we would delay the decision as to whether this becomes an Article unto itself or whether we combine it under legislative---I mean the exact fixing---wait and see how other things develop.

MR. HARVEY: Have you had any contact with Dr. Hall or Ellis MacDougall on this?

MR. STOUDEMIRE: I've talked to Ellis.

MR. WORKMAN: I think this properly would go under legislative because it all winds up by saying the General Assembly shall.

MR. SMOAK: I don't know, Bill. It seems to me that it is something that ought to be---

MR. STOUDEMIRE: Marion, I sort of agree with you, but for a different reason, perhaps. I think that when we get through the Legislative Article it will be long enough on its own.

MISS LEVERETTE: Well, you know in some of these, Bob, they've set up a social and economic policies area such as education, health

welfare and all of that under one whole area.

MR. STOUDEMIRE: Now, gentlemen, come to education---is going to separate the men from the boys. As you know, this involves your question, such things as the Superintendent of Education, the Board of Education, whether you shall have a constitutional mandate on 3. Also, another major issue is what shall be the relationship of state to private and religious? All these come up here and if you have not read the current sections on property or credit of the State not being used for sectarian institutions and so on, you'll find, to me, if it is enforced, it is extremely restrictive. Extremely so. I don't know, way I read this thing, I don't believe you could even subsidize a school lunch program for a---it says, "directly or indirectly". Now, I notice that the Alaska Constitution takes off from here and it says you can't do anything "directly" which I think might be a significant point here in the meaning of this "directly or indirectly" you see. So, Mac, I suppose the place to start is with number one.

MR. McLENDON: Start on page six.

MR. HARVEY: I think I pointed out last meeting that in attending this Southern Regional Education Board---it appears to be a growing trend or thinking in the country that in the field of higher education, the state may want to use private educational institutions through supplementing them and I understand that this a feature that they were putting into the New York Constitution. To "allow".

MR. STOUDEMIRE: One gimmick is contract, you see. I don't think this is quite as pertinent to this State as some others, but I can see very well where, for instance, if we should have a Duke in South Carolina in the future that where the State of South Carolina might want to contract with a Duke for a forestry program since Duke has one, let's say.

MR. WORKMAN: There is an interesting English practice in which public monies are allocated to private institutions in terms of out-right grants. This has been going on for years and years with no questions. They just come up and so much money is allocated to this school, that school and that school. They take the money and put it to educational purposes and the government doesn't get into the act at all. I don't think we could do it that blithely over here.

MR. STOUDEMIRE: Mac, if people have not looked at this table I call page 8. It shows you what happens to superintendents of education and so on in the other states for whatever it might be worth. And you notice, here, they do this thing in terms---Elected by the people, '47 - '65, Appointed by the Governor, '47 - '65 and Other Methods, you see. Shows you how it has been changing until it looks now that the chief method of selecting---still a lot of them elected, about half. 22 to 23. Well, gentlemen, I point out to you, I don't



think our vote on the issue proved a thing.

MR. SINKLER: What was the vote?

MR. STOUDEMIRE: I can't recall now, but to keep the Superintendent elected was just by a couple of thousand, wasn't it, Bill.

MR. McLENDON: 3,000 votes difference.

MR. WORKMAN: Yes, it was a narrow one on that.

MR. SINKLER: What is the thinking of the Committee? I'll defer to you guys who are skilled in the field of education.

MR. WALSH: It is tied in a little bit with the thinking of the Executive Department of the State. It seems to me that if we are going to substantially reorganize the Executive Department and perhaps give more order to it, then this might be a part of that. Along the lines of saying, the Executive Department of the State shall be divided into twelve departments for the administration of all of the services. You see now we just have so many executive departments divided up---how many---100 different---

MR. SINKLER: Have independent departments, too, don't we?

MR. WALSH: Yes. Yes. Each has an independent board which is responsible, practically, to nobody. There can be no over-all planning with regard to what they can do or anything.

MR. WORKMAN: We've got to establish within our thinking whether we want to move towards a cabinet system or whether we want to maintain the electoral right of the people to nominate the heads of departments. We've got an anomaly in the case of education because we have a publicly elected board---I mean a popularly elected superintendent and a board is indirectly appointed---I mean indirectly elected through the legislature.

MR. McLENDON: Judicial district proposition.

MR. WORKMAN: Again you run into a diffusion of responsibility and authority there which I don't think is good. Now, when those constitutional amendments were proposed some years ago, it was thought that they would necessarily go hand in glove because they would come out with the election by the indirect method through the legislature of a board, then the selection by that board of a professional superintendent. They got the board, but they didn't get the superintendent and this distorts the rationale which was back of the plan to start with. The analogy was the highway department.

MR. STOUDEMIRE: I would like to throw this in for what it might be worth. I'm not quite sure at all whether or not a man be elected and being elected by a constitutional provision are the same thing.



In other words, I could see where the General Assembly might still provide for the popular election of a superintendent without necessarily making this a constitutional provision. And this, I think, people get confused sometime.

MR. WORKMAN: As with the Commissioner of Agriculture.

MR. STOUDEMIRE: They can still do it by law, maybe, but not necessarily pin it to the Constitution. In other words, I don't know whether the election of a superintendent of education is a constitutional question.

MR. SINKLER: I think you have got more of a political question. I think all of this stuff, for instance, if you suddenly made the Highway Department directly responsible to the Governor, you would have a tremendous political question and you've got the same thing here. Probably even more so and the old guard fight the thing--- they want the people to have the choice. A lot of this stuff, I suppose, was written into the Constitution when they were thinking in terms of the, perhaps, the development of Charleston into a Catholic center. There was a great fear of Catholic hierarchy in South Carolina at that time. You find some extraordinary decisions that really go off just on the question of the guy was Catholic. I'm trying to think of one of them---some constitutional provision was just aborted just to keep some money from going to the Catholic church and at that time, I think, there was a tremendous fear of papacy in South Carolina. Statewide, wasn't it, Bill? I mean, it was not confined to our part of the state.

MR. WORKMAN: No. It was focused on Charleston, of course. The fear was statewide.

MR. SINKLER: So a lot of these things, really, go back to that thought.

MR. STOUDEMIRE: I think this might have a bearing. As you notice, now, it has only been in the last four or five years that the Board of Education has been a General Assembly agency as opposed to a Governor's agency. Also, evaluating this executive authority, I believe I'm correct that before the National Guard incident, the Highway Commission was Governor. Also, the Budget Board back before that time was administrative, Governor, Treasurer and Comptroller and the two legislative members have been added---

MR. SINKLER: Go back to the Ray against Blease and you had the old Sinking Fund Commission. I notices that in this bond case because it was one of the little questions we presented and we found this old case which goes way back before the teens. The legislature has always had a part in this thing. This idea of legislative control, you see, is the Tillman---

MR. WORKMAN: The Budget and Control Board was reconstituted in 1946 of seven.

MR. SINKLER: Well, it may have been reconstituted, but the Budget and Control Board was functioning back in my early legislative days which was the thirties, Bill.

MR. McLENDON: The Sinking Fund?

MR. SINKLER: I've forgotten whether they called it the Sinking Fund. The only thing they did was to take off old Attorney General Daniel and put on somebody else. That was the change there. In those days he didn't want to be on the thing and asked to get off. But that was a super State Council. It goes way back, Bill. It goes back to Colonial days. Always been a precedent.

MR. WORKMAN: That's true. That's one of the problems that we--- one of the backgrounds of the overweening concerns of the legislature with executive functions. The history of the entire southeast and most particularly South Carolina has been from the very beginning the legislature insisted on its right to move into monetary matters and other things which, by tradition, in England has been a purely executive function. So, we are simply following the tradition---this business of limiting the authority of the executive in South Carolina. It's going to be hard to kick that over.

MR. STOUDEMIRE: Mac, I think one way of getting this thing on the superintendent is, first, Shall he be constitutionally elected or shall he be selected in some other method?

MR. WORKMAN: To resolve the question and to put the problem, I would propose that the superintendent---that we maintain the election of the board as it now is constituted by the General Assembly and that the State superintendent of education be selected or appointed by that body. Which takes us back to the question which was submitted to the people and had the split vote. Now this may or may not be acceptable, but I suggest that.

MISS LEVERETTE: I would second that.

MR. SINKLER: Let me follow you now. You want to leave---how do you want the language to read?

MR. WORKMAN: I hadn't gotten to the language.

MR. McLENDON: 2 would remain the same. It's page 7. Is that what you're saying? You go back to page 6.

MR. WORKMAN: Yes. Page 6. "The supervision of public instruction shall be vested in a State Superintendent of Education, who shall be 'selected' by---" State Board of Education or such terms---whatever else you want to put in there in the way of that language. I don't

remember---do you, Dick, recall the language of the proposition that was submitted when the constitutional change was proposed. In effect, that's what it is, though.

MR. RILEY: Same thing.

MR. HARVEY: There shall be a Superintendent of Education who shall be appointed by the State Board of Education.

MR. RILEY: Mr. chairman, by way of discussion, I agree that it should be appointed, rather than elected which is one basic decision we have. I personally think, and I'm just thinking out loud, for the good of education of South Carolina that it ought to be a gubernatorial matter. I think we ought to have a fair discussion of that to start with. Now, it has just been my observation, might be incorrect, that in states where the Governor has these appointments, whether by approval or however, recommendation, it appears to me that the function of education moves in a better direction. Now, I might may be way off base and I'm sure---I'm not completely married to what I'm saying. I'm thinking. I think Georgia---is the way they handle it, in that fashion. You get a Governor in Georgia in the field of education---Emmet, I'd be interested in hearing from you because that's your specialty---he can really do something for education. You can't move with education in South Carolina like you can in these other states.

MR. McLENDON: Dick, is the reverse true?

MR. RILEY: What you mean now?

MR. McLENDON: Is the reverse true? Suppose he wasn't wedded to it and didn't have any particular interest in it, could he hurt it.

MR. RILEY: He's the one man, though, Mike, that's elected by all the people in the state. The man I might send from Greenville might disagree with the man you send from Marion.

MR. McLENDON: You mean on this Board.

MR. RILEY: On the Board and the Board is what we are talking about. The legislature will have to approve what the Governor tries to get done and what this Board tries to get done. I mean it will still have a function in there. What I'm talking about is the work of this Board, at first blush I would say for the good of the State, it would be better to begin with the Governor.

MR. SMOAK: I think the suggestion that Bill is making would probably produce for us the most capable man and would probably keep this job on a very high level. It would tend to bring real educators into this position which is one of the higher objectives it seems to me. At the same time, I would hate to see it done this way solely because it would---well, it would pretty well remove him from any political or elective pressure whatsoever and I think that there ought to be

some influence along these lines. Of course, education is a tremendous undertaking. It's the biggest thing, I guess, that the State has to do and we're spending a tremendous amount of money and my observation is that if you remove these people completely from any political pressure, you lose control and they can get off base too. They tend to be channelized and they tend to go down one street only. Now, what formula you could arrive at, I don't know. Maybe we should work in some combination here.

MR. SINKLER: Aren't we asking ourselves are we satisfied with South Carolina or do we want to change it? Now, I'm very interested to hear somebody advance Georgia as something to look up to. I have always said that the curtain dropped at the Savannah River. I consider them in the uncivilized part of America and that we were in with North Carolina, Virginia in a more civilized area, personally.

MISS LEVERETTE: I would be interested in knowing why, according to your chart here, Bob, why so many of these switched over to the Board rather than the Governor?

MR. WORKMAN: I have the fear that the Governor's right to make an appointment of that consequence is subject to a lot of non-educational pressures in terms of political pay-off, in terms of building machines through the school teachers or whatever, that the Governor could on the one hand accomplish a great deal by this. On the other hand, he could accomplish a great deal of harm if he misused his prerogative of making an appointment. Whereas, if a Board which is selected as the State Board of Education, under the present system you legislators, I think, will bear this out---that unless an individual shows himself, the candidate from your judicial circuit, shows himself to be competent and interested in education, there's not much likelihood of his getting elected because he's got a diverse group within a judicial circuit that's got to agree on him---say that this man is interested in education and he does not have within a judicial circuit much political power that he could build up because judicial circuits don't lend themselves to political mechanisms. There was proposed in the beginning as an alternative which would get at what Senator Smoak is concerned with---the removal of the isolation of the chief school officer from political pressure, or from the people. We'll put it that way. One of the proposals that was very seriously considered would be to have the members of the Board of Education elected. The Board members elected thereby they would be responsive directly to the people and then they would have the secondary responsibility of the chief school officer. This was debated in the legislature at some length and it was determined to go to the highway system as an alternative to this because it got the legislature to agree that they were going to get squeezed out. But this is a possibility which would retain a popular pressure against the chief school officer. I think in the long run that the opportunity for perversion or malfeasance in the job is



greater if it's appointed by the Governor than if it's appointed by a Board. The Board is dedicated to education by very definition.

MR. McLENDON: To get it all before us. There is some fallacy in this Board election thing which worries us in the General Assembly. While this Section 2 says "that they shall be elected by the General Assembly", as a matter of fact, we know as a practical matter that when it rotates around to Beaufort or Marion or Richland, it's just that little group of people who have selected that man and really, it's not a legislative selection of a Board. It's really---when it rotates to a county like Marion, then the selection would come from that county.

MR. SINKLER: This rotation idea is absolutely fierce.

MR. McLENDON: It sure is.

MR. SINKLER: You get a situation like Richland County which is tied, isn't it, to Kershaw County. Charleston County tied to Berkeley County. It's just absolutely ridiculous.

MR. McLENDON: It is.

MR. SINKLER: Charleston has got 260,000 people; Berkeley County's got 38,000, yet it's got to go around. Totally absurd.

MR. WALSH: I was going to say this in regard to two items.

MR. SINKLER: But I don't go quite back to where you are.

MR. WALSH: I don't know, really, what the answer is. I would like to see some more study almost on it. I don't have any firm feeling on it, but I do say this, I think there's almost as many fallacies in this election by judicial district as being appointed by the Governor. I see, our Highway Commission method, so to speak, whereby they are elected---rotate around, worked pretty well for a good period of time, but it's on the point now of disintergrating. We've got such bigger problems. They get some people that know absolutely nothing about the mammoth problems we've got and I've seen them throw millions of dollars out for nothing. We've got to come to the realization that these things have to be administered almost.

MR. SINKLER: Mr. chairman, the Governor is responsive to the people and the big areas of population should make themselves heard in that way. That's your thought, basically, isn't it Dick?

MR. RILEY: Well, my thought, basically, is that education is the biggest function of State government and it should come from a statewide policy and I feel like, while many of these things we propose would not have a chance of getting passed, we ought to project into the future and I think that we can best have a sound, statewide,



progressive policy on education by having the Governor appoint the Board and the Board appoint the Chairman of the Board or Superintendent and I've been completely impressed with the Governor's appointments on this Higher Education, but you compare that with certain highway commissioners. It's not always a question of qualifications and nobody looks to the future of the highway system, this, that and the other. I realize that you could have a Governor, as many of us thought Maddox was going to be like, that could come in and could have certain appointments that could be just as bad or worse, but I just felt like that from a statewide policy viewpoint that we certainly ought not to go through this without considering having these appointments made by the Governor.

MR. SMOAK: Would it be possible if you went to that solution---

MR. STOUDEMIRE: Question I want to raise. I notice that Maryland, New Jersey, Alaska---is this a constitutional or statutory question? Do you need it in your Constitution that your Superintendent of Education must be and your Board must be, or is it a thing that the General Assembly should prescribe by law?

MR. SMOAK: I think from a legal standpoint---I don't think you do need it in there, but I think maybe from a practical standpoint---education is so big and it is such a vital and important thing. Maybe it ought to go in.

MISS LEVERETTE: I think it is more important that it be in there now than it ever was.

MR. WALSH: I rather agree with Marion on that. You can leave it out, but I think it's such a---well, it's half of the State.

MR. SINKLER: Aren't we debating the Privy Council against the Governor? You'll debate that all the way down.

MR. WORKMAN: That's the point I raised a moment ago and I backed away from that argument in deference to what Dick and some of these have presented here, particularly in view of the fact---back when I was covering the legislature regularly, I saw this same thing beginning to develop with respect to the Highway Department.

MR. WALSH: It's developing.

MR. WORKMAN: During this later period in which that apparently come to a pretty deplorable situation. And in support of what Dick was saying now, a Governor who runs on a platform for a program which incorporates a large measure of educational progress at least is a commitment. He is pretty well hamstrung of putting that program into effect even if he has the endorsement of the people unless he has some influence on the Board of Education. Of course, I'm arguing against myself---my initial position. But if the people subscribe

to an educational program put forth by the Governor as a statewide campaign commitment, then if he is elected and has no means of implementing that, then that program can founder and die unless by personal influence he can get it through the Board or through the legislature.

MR. STOUDEMIRE: Gentlemen, my memory is this. That the old Board, seven member board, appointed by the Governor, and a lot of the criticism directed was really not to the Constitution, but that governors had allowed professional educators to be the only people on the Board and that was the fault of appointment and not the constitutional provision. But, by the same token, many of us who ordinarily would support the appointment of a Superintendent of Education actively worked to defeat this amendment, based on the fact that we were disgusted with the political processes involved in some of the squabbles over getting Board members.

MR. McLENDON: That's right. Had a lot to do with it. You're absolutely right.

MR. STOUDEMIRE: I really believe that there was enough strength among some of us who would have ordinarily voted for having the man appointed to have changed the results because we didn't like the political processes that we noticed in the Board.

MR. WALSH: About the time I was in the General Assembly, I noticed this idea of really not making a choice for any of these positions on the basis of qualifications.

MISS LEVERETTE: Aren't what we are saying here is that we feel that this particular area of state government should be divorced from politics as far as we can make it and the question is what method?

MR. SINKLER: How do we define politics?

MR. WALSH: I don't believe you can possible divorce it from politics. The object is, how can we provide for the best system?

MR. SINKLER: Within the political framework.

MISS LEVERETTE: What I meant was political pressures that you have been discussing here, say whether it is the governor or this present Board set-up subject to being misused.

MR. SINKLER: I don't know who the members are on the thing now.

MR. WORKMAN: I have just a scattering of ideas.

MR. SINKLER: I think this rotation among the counties is perfectly appalling.

MR. WALSH: I'll throw this thought out. Actually this method which they think is leaving it in the General Assembly almost completely divorces it from control by the General Assembly or the people.

MR. WORKMAN: Well, we come down to, basically, whether we are going to vest that authority in the governor or vest it in the legislature or vest it directly in the people.

MR. SMOAK: Well, Bob, how far can we go---we're dealing with the Constitution now---how far can we go towards writing any of these various qualifications?

MR. STOUDEMIRE: Other than saying---other than fixing them, how he gets his job and I think you are subject to amendment if you try to spell out that he shall be a Ph.D. from South Carolina or Missouri or what have you. In fact, on your Board, I would simply---there shall be a State Board of Education selected according to law, period. Judicial circuits are very dangerous. They're subject to Reynolds versus Sims, I think, in the future. This wouldn't prevent the General Assembly from using a judicial circuit if it seems feasible and so on, but I don't think you can spell out---

MR. SMOAK: What about something like "appointment by the Governor, from a list recommended by the Board"---something like that. Could you go off on an angle like that?

MR. STOUDEMIRE: Yes. I think you could do this.

MR. SINKLER: Well, I don't know about a list furnished by the Governor because he would also have his own man there. I don't think that. You've either got to give it to him or take it away from him.

MR. WORKMAN: Dick, what do you think of the idea of a gubernatorial appointment of the Board, subject to confirmation? Would that---

MR. SINKLER: Staggered terms so that no one governor could have control. Are you going to limit the governor to one term or are you going to let him have two terms?

MR. WORKMAN: We haven't come to grips with that yet.

MR. STOUDEMIRE: Mac, let me raise this question---I don't want to delay this thing. Next time we do, if we keep up with our agenda and I don't know if we are, the Governor does come up for discussion. Now, can this problem be separated from the over-all philosophy of governor or not and are we really biding time now or should we delay it to see how the members feel about what should the power of the governor be and come back to this type of thing at that time or should we settle it now? I don't know.

MR. McLENDON: My reaction is that we ought to settle it now because education is such a massive portion of our problem that the authority of the governor in so many other fields are really not---

MR. RILEY: I think we ought to be thinking more about education at this point than we should---

MR. McLENDON: ---Governor's authority. Yes, that is the point.

MR. HARVEY: My experience in the legislature and I agree with a lot that has been said here about the legislative method of selecting, but before you completely discard the legislative method---my experience has been that you get better qualified people if the legislature as a whole---

MR. McLENDON: Now, I'll go along with that.

MR. RILEY: I agree with that.

MR. HARVEY: ---has been, I think, pretty effective.

MR. SMOAK: Turns the light of day on these appointees. You get one that is way out of line, somebody's going to point it out.

MR. HARVEY: The reason is because, while he may be a friend of the whole Greenville delegation, I ---

MR. WORKMAN: Let's do this for procedure's sake.

MR. SINKLER: I like your idea. I don't want that discarded.

MR. WORKMAN: I gather that it is the concensus that we think that the Superintendent of Education, the one office, should be appointed by a Board and we are now concerned about how we get that Board. So let's move on to Section 1 and establish that the Superintendent of Education shall be appointed by the Board of Education if that be our reasoning.

MR. WALSH: I would say that that ought to be incorporated under the Board.

MR. McLENDON: We have to decide what to do about the Board.

MR. RILEY: Two years is the proper term, is it not?

MR. STOUDEMIRE: No. Four.

MR. RILEY: It is four now?

MR. STOUDEMIRE: We amended the executive article Dick.



MR. WORKMAN: It's been four.

MR. STOUDEMIRE: That "two" is the official wording of the Constitution at this place. It had been over-ridden by a later enactment in Article IV.

MR. McLENDON: Then, the general concensus is that we feel that he ought to be appointed by the Board, then we're going to deal with the Board.

MR. WORKMAN: Now we're on the Board.

MISS LEVERETTE: Are you using the term "sêlected" or "appointed"?

MR. WORKMAN: Appointed, I think.

MR. SINKLER: Somewhere down at the end of this thing we've got to be sure that the same word is used in the same context.

MR. WORKMAN: "Appointed" is a better word because newspapers can sometimes drop the "s" and get "elected" or "selected".

MR. McLENDON: Well, gentlemen, we've got 10 minutes to 1:00.

MR. RILEY: Mike, I think we better go ahead with the discussion. If to get it satisfied---if this is agreeable to the group, I would make a motion that I like what you said. Certainly if the legislature handles it, I think that would be a very sound way to have it. Just have two from each Congressional district---

MR. SINKLER: Don't want to have too many.

MR. HARVEY: What's wrong with one from each judicial circuit?

MR. RILEY: Can't use judicial circuit. It's not logical. I just don't see the logic---I think we're going to---

MR. WORKMAN: That's got to be revamped shortly.

MR. STOUDEMIRE: I would say this. If you are going to specify a district, Congressional district may be the best because under Reynolds versus Sims and other things these districts are going to have to stay---

MR. RILEY: Reapportioned.

MR. STOUDEMIRE: Yes. Within reasonable bounds.

MR. RILEY: Then we could have the legislature elected them---we could have---they have 16 now---anyhow if we wanted a 15 man board, two from each Congressional district and three at large or we could have one from each Congressional district and one at large, or three at large

MR. SINKLER: Let's cover it in case we lose a Congressman and it shall be an odd number or something like that---one shall be elected from each Congressional district and so many more shall be elected as will produce---not less than two so as to produce an odd number, something like that.

MR. WORKMAN: Is there any merit in a combination of election and some appointed by the Governor?

MR. RILEY: Three appointed by the Governor and one elected by the legislature from each Congressional district.

MR. SINKLER: Let's give the Governor an appointment.

MR. McLENDON: That's a good idea.

MISS LEVERETTE: That would tie in both of them.

MR. RILEY: Then if you had an appointment---what would it be? Every two years, every year, every four years.

MR. SINKLER: Work out the mechanics.

MR. RILEY: So that the Governor would have somebody on there.

MR. SINKLER: That's an excellent idea.

MR. WALSH: Why don't you have one from each Congressional district and let him appoint three.

MR. McLENDON: That gives us six and three and that would be a nine man Board which is manageable.

MR. RILEY: And then, Huger, if we lost a Congressman or picked up one, it would be an even number.

MR. McLENDON: Well, in order for us to have it to chew on here, somebody---Dick, you're at the head of the table, dictate it here so that we can think about it.

MR. SINKLER: Let's agree on the idea. Let's leave that to the draftsman.

MR. RILEY: I would generally then propose that the State Board of Education be composed of nine members, one from each Congressional district, elected by the General Assembly in joint assembly and three appointees at large or statewide, appointed by the Governor.

MR. SMOAK: The remainder to be appointed by the Governor.

MR. SINKLER: With the advice and consent of the Senate?

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MR. RILEY: No, No, I don't think---

MR. McLENDON: The Senate is going to participate in these others.

MR. SINKLER: If we think we are in mechanical trouble then we can have a committee on mechanics. The idea is what we want to put across.

MR. SMOAK: Let's let the Senate take a look at those appointees.

MR. McLENDON: Well, they're voting on the six.

MISS LEVERETTE: They are already voting on six.

MR. RILEY: The Governor ought to be unshackled on those three---

MR. McLENDON: The General Assembly is electing six and he's only got three. The General Assembly would still have the controlling voice, two to one.

MR. STOUDEMIRE: That's all we need, "term to be specified by law".

MR. RILEY: Powers and duties.

MR. STOUDEMIRE: And not get into that overlapping and all that ballyhoo.

MR. McLENDON: Then it's going to be this Board appoints that Superintendent. Then he would be responsive.

MR. STOUDEMIRE: Well, then, you see, constitutionally wise, Article on Education, then. You start with your Board of Education as your key thought and then this leads into the administrative official.

MR. McLENDON: Should the State Board of Education Section go ahead of the Superintendent of Education. You ought to reverse that.

MR. SINKLER: Got a good result there. I wouldn't have had it without that Governor's business there.

MR. WALSH: I would like this thought, too, of where you say this Board elects the Chief Administrative officer who shall be the Superintendent of Education---you might throw in the idea if you think well of it "that he shall be the chief administrative officer responsible for developing a system of public education".

MR. SINKLER: Let's let that be a legislative policy.

MR. HARVEY: Duties and powers---

MR. WALSH: I'm just thinking along the line that if this is an important thing, we ought to make a fair statement of what we want out of it.

MR. McLENDON: Well, this section now says, "his powers, duties--- his powers and duties shall be defined by the General Assembly". Well, are we in general agreement about the over-all feeling? We'll leave it to the draftsman.

MR. SMOAK: I believe that will produce a good man.

MR. McLENDON: Well, that brings us down to page 9, Section 3, School Officers.

MR. RILEY: If anybody has to make a draft up in the future like Bob has here they'll really be confused when they come to South Carolina should we incorporate that.

MR. STOUDEMIRE: Our answer to that is that you use a computer to register students because it helps and not because you have a computer.

MR. McLENDON: Bob, you have a pertinent comment on Section 3 and 4. You seem to have dealt with them together.

MR. STOUDEMIRE: I don't see why they're there. I think my pertinent comment, "The General Assembly shall make provision for the election or appointment of all other necessary school officers, and shall define their qualifications---". I think they had the right to do this anyway or we have such a hodge podge of laws all over the State until I don't see how you could make a constitutional directive. "The salaries of the State and County school officers and compensation of County Treasurers for collecting and disbursing school moneys shall not be paid out---". I think that is really old fashioned language which was valid in '95, but really would be done now anyhow, wouldn't it?

MR. WALSH: You ought to leave it out.

MR. STOUDEMIRE: I really don't see where it's any harm if you do pay the County Treasurer.

MR. SMOAK: I don't either. That's my thought.

MR. HARVEY: You certainly pay County school officers--"salaries of County school officers shall not be paid out of school funds"?

MR. STOUDEMIRE: Talking about the Superintendent of Education, I think.

MR. SINKLER: You had the constitutional school tax in those days. That's what you're going back to. They were preserving that constitutional school tax so with the constitutional school tax gone, the thought is



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not necessary.

MR. STOUDEMIRE: Historical matter---Workman agree to deleting those?

MR. WORKMAN: Yes, sir.

MR. MCLENDON: The concesus is that we eliminate three and four.

MR. WORKMAN: I think they make no contribution.

MR. MCLENDON: Looks like five has been eliminated for us.

MR. RILEY: Let me ask one question there on three, Bob. Election and appointments of school officers. Who are some of those that would be? None?

MR. STOUDEMIRE: I don't know. I would think in terms of times that this thing was written it would be county superintendents of education.

MR. RILEY: So, there's nobody that you know of other than the Board that the General Assembly has anything to do with or anybody else. I was thinking that if there are any, we ought to leave that in.

MR. STOUDEMIRE: I would interpret this 1895, Dick. School officers, 1895, would be a County Superintendent of Education, wouldn't it?

MR. SINKLER: School trustees, commissioners of schools.

MR. STOUDEMIRE: Because you see, gentlemen, when you come over here a little later on school trustees, you've got a long constitutional mandate and when you get down to the last sentence and it says, "The General Assembly may vary this according to its wishes" anyhow and you take it all back.

MR. HARVEY: I think that if we are going to take those specifics out, then I agree with your comment---maybe we ought to have a general statement of the State's responsibility towards the public schools---

MR. STOUDEMIRE: All right. When you get through here you might well come back with a Section which says, "that the General Assembly shall pass the necessary laws for the governing of local schools"---this is not my language---that what you're getting at.

MR. WALSH: Provide a system of education and then you---

MR. WORKMAN: What you are doing is anticipating the possible restoration of Section 5 which said years ago "the General Assembly for a liberal system of free public schools" and we knocked that out.

MR. McLENDON: We're getting ready to go back to---.

MR. SINKLER: You want to watch out here and you ought not to ignore the special act provision in the Constitution. Originally, I guess it was 6 of XI, had geographical limitations worked in on schools and also had a mandate against special laws there. We used to have these constitutional amendments letting each county have school districts of its own size and re-establish boundaries by special acts. Then, when you took out the free schools, you took out---may have been in 5, in 5 I guess I'm talking about, you took out all of the amendments and you leave back in the Constitution under of 34 of III, a prohibition against special schools which concern me greatly in this Aiken situation that I had to deal with. I think if you ever read any of the letters that I wrote, we thought that perhaps there was a provision now in the Constitution that the power that the General Assembly thought they had to establish school districts by special act no longer existed. So, that if you will recall in the re-establishment of the old Aiken school district we got action from the County boards as well as that legislative amendment and so when we are dealing with schools, let's don't forget that little thing stuck over there in Section 34 which has no real place in it at all. A special act provision. That was in the old 5 of XI, 8 or 9 of 34, III.

MR. STOUDEMIRE: Thirty-four has been renumbered, but it's still in there.

MR. WORKMAN: Special laws.

MR. SINKLER: On the other hand, now, I'm very much in favor of prohibition against special acts with respect to education. I don't want special acts concerning the actual operation---I mean general operation of the schools, but I damn well don't want to see the legislature coming along and saying that such and such shall be taught in Berkeley County and shall not be taught in Greenville County. You can't just say, no special laws relating to school districts. You've got to have something in there, but you've got to confine it to---

MR. WORKMAN: Geographic---

MR. SINKLER: Not geographic. You've got to confine it to the area of teaching rather than the area of operation. In other words, you don't want to have a law passed in Richland County that they can't teach the history of South Carolina as it was taught in 1905. And you don't want to say that they shall teach evolution in Greenville and not Charleston or some ridiculous situation like that. So, you want to watch that.

MR. WORKMAN: Let me ask this. This prohibition against incorporating school districts not be special legislation. Has that not been done in many instances where you've got overlapping of counties.

MR. SINKLER: Well, they held that that didn't apply to consolidation. Applied only to creation, but 5 of Article XI had a similar provision. To get around this business of creating larger school districts---they used to have a geographical limit. Every time you issued a school bond, you had to get a survey to be damn certain you didn't have more square miles in there than you needed---than you were allowed. So, up until the time they took out the mandate for free education, these special amendments to Section 5 of Article XI cared for the situation. Suddenly that's gone so this thing over here about the special act under Article 34 has reinstated this, in my judgment. Leads to a serious legal question and I had to, as a practical matter, try to overcome in Aiken County, but just to say that there will be no special laws in respect to school districts and this goes back to your business about what your mandate to the General Assembly is. I don't think you want to mandate to the General Assembly that they do everything in the field of education by general law, but I do think you want to have the General Assembly tell the public school system that they shall teach the same things everywhere and not have these special things---or I mean prohibition against certain types of teaching or that sort of thing.

MR. McLENDON: Gentlemen, it's five after one and I believe we better adjourn for lunch.

MR. STOUDEMIRE: I imagine we will be through with education in about an hour after we get back.

MR. SINKLER: Why can't we, in the future, just have a sandwich here?

MR. STOUDEMIRE: Gentlemen, I think, really, Mr. West has already requested something about the next meeting on the date we had it set. I think all these things can be done if we do them in advance.

MR. SINKLER: You like this two day---

MR. STOUDEMIRE: Well, there's no reason we can't work tonight if we had settled this last time, you see.

MR. WALSH: I would say this. Last time it worked perfectly.

General discussion about next meeting

Break for lunch

MR. McLENDON: Back to Section 5.

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

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MR. WORKMAN: That would open it up for this kindergarten that's coming.

MR. STOUDEMIRE: Yes. That would open it up for everything as I see it. And would get us out of all that clumsy language we have over in Section 8 about the colored normal, industrial, agricultural and mechanical college.

MR. WALSH: Well, what would be wrong with a statement like that?

MR. SINKLER: Do we want to have---following my thoughts---some statement somewhere, either here or in the limitation on legislative power, concerning the fact that laws relating to education---I'm talking about education, now and not fiscal affairs, be uniform. I think there's a need for that. I don't know whether this is the place to put it or whether it should go in the section on legislature which would necessarily do with legislative assistance.

MR. WORKMAN: I think it ought not to go in here.

MR. SINKLER: All right. Well, fine. Then I think we do this in general language.

MR. WALSH: I think there is a need for this general statement.

MR. STOUDEMIRE: You like the statement in the model?

MR. SINKLER: Model sounds O.K.

MR. WORKMAN: Now, shall we, to maintain continuity of expression, use General Assembly?

MR. STOUDEMIRE: Yes.

MR. RILEY: Did I understand you to say that there is a problem about the "free" aspect of it?

MR. STOUDEMIRE: Well, see, "free" is taken out. I just want to make sure that you knew what you were doing when you're putting it back in, that's all. That's the only reason I raise it at all.

MR. WALSH: We had the word "free" in there for many, many years.

MR. WORKMAN: Let me backtrack just a moment because if we put the word "free" in there, it is quite conceivable that we might be---or the government might be hooked on this business of tuition and higher education.

MR. STOUDEMIRE: You can be hooked on that anyway. It won't be depending on the "free" I don't think.



MR. WORKMAN: No. This thing is red hot in New York and California and every place else as to what the obligation of the State to provide free education, to what level. If we got in there free public schools, including public institutions of higher learning, it gives the ground for somebody to come in and say, "Well, the Constitution says 'free public schools including higher education'".

MR. STOUDEMIRE: No. Free public schools open to all children in the State and shall establish---I think your "other public institutions"---

MISS LEVERETTE: "Other". They say "other". So wouldn't that distinguish.

MR. WALSH: I think so, too.

MR. SINKLER: Well, that would be, really, a matter of phraseology. The thought---do we approve the thought?

MR. WORKMAN: Yes.

MR. STOUDEMIRE: Well, you see, really, when you get down---when I put all of this stuff in final form and give you some annotations this would say that the idea "free" here provides for what we now know as public schools. Quite often courts go back through and see what the intent of a thing really was, based on the journals.

MR. SINKLER: That is the most important thing we can do is to express our reasoning back of each one of these sections. You know the journal of the last convention is just like the journal of the legislature with the exception of Tillman's famous speech so that the only method of finding out what went on---and I have found some interesting debates---

MR. WORKMAN: In the press.

MR. SINKLER: The Charleston News and Courier, the left hand column on the front page in that weekly edition they published. That was the only covering of the Constitutional Convention. I have been to the library several times in Charleston just to read that.

MR. SMOAK: Could I ask one question before we go on. Just what is the extent of the use of the word "free" here. How far would that go?

MR. STOUDEMIRE: "Free" to me would go down to the words "in the State". If you want to, you could make it clearer by making it two sentences.

MR. SMOAK: Would that require the State, for instance, to further expand the business of free text books to children?

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MR. STOUDEMIRE: No. I don't think so.

MR. SMOAK: What would be result if you---

MR. STOUDEMIRE: The reason I say, I don't think so---if you go back up a few lines---this is quoting from our present Constitution. "The General Assembly shall provide for a liberal system of free public schools for all children between the age of six and twenty-one" and that was never interpreted there to keep us from buying books and so on.

MR. SMOAK: Or require us to buy them.

MR. HARVEY: Charging fees for certain activities---

MR. McLENDON: With the change of the word "General Assembly" for the word "legislature".

MR. STOUDEMIRE: Now, Section 6, gentlemen. "The General Assembly shall define 'enrollment'". I feel it has that right anyway and you get into this hodge podge statement in here on trustees and the important thing of that is, "Provided, the manner of the selection of said trustees need not be uniform throughout the State."

MR. McLENDON: Puts it in the General Assembly.

MR. STOUDEMIRE: Yes, my reasoning. And "there shall be assessed on all taxable polls in the State between the ages of twenty-one and sixty" and so on. "Any school district may be the authority of the General Assembly levy an additional tax for the support of its schools." My feeling is that the whole thing ought to be eliminated.

MR. McLENDON: Yes, I think so, too.

MISS LEVERETTE: Excuse me just a minute. I meant to ask a question back there when we were talking about school officers. I notice the annotations under that refer to school trustees and you were asking whether there was any---that thing about where we deleted, Section 3---you notice there they discuss qualifications for school trustees which I assume they are including that in school officers.

MR. WORKMAN: Well, this brings up the point, Sarah, with respect to dual office holding. Heretofore, dual office holding has included the school trustees, in my judgment because they are set forth in the Constitution as being school officers, so it is kind of evident that they are officers on the face of it. If we eliminate all reference to trustees, I think the case could be made to say that they are not public officers because their duties of office are not set forth in the Constitution. Then we may open up this dual office

holding thing to other ruling.

MISS LEVERETTE: I have no objection there. I was just pointing out the fact that they were included in that Section that we deleted and then when we are considering this one, too.

MR. SINKLER: We've got to decide policy on these general and special laws because some of these things are tied in with that and, it seems to me, that we would skim that there and if we decide that everything---like everything with respect to special laws, ought to be in one section---whatever we have---whatever we decide on so that in that you could either spell out, really, that the trustees could be done by special law or something like that or indirectly say they can or cannot and then you cover---once you've got that written, then I think you might determine whether you need to go into that at this point.

MR. WORKMAN: I was just concerned lest the omission of any reference to trustees would take them out of this category of public officers where I think they belong.

MR. SINKLER: Definitely, definitely belong. Why don't we have one simple dual office holding---aren't we going to have a dual office holding provision somewhere.

MR. WALSH: We've already got that.

MR. SINKLER: How was it?

MR. WALSH: Left it substantially as it was.

MR. WORKMAN: Is there further reference to trustees anywhere in here, Bob?

MR. STOUDEMIRE: I don't think. Bill, I don't think whether a person is mentioned in the Constitution makes him an officer necessarily at all.

MR. SINKLER: That's just a constitutional officer.

MR. STOUDEMIRE: The way they define---the way they look at what the job does, discretion and so on. Like Dan tells you in one of these letters here---he thinks the City Manager is an officer.

MR. WORKMAN: Well, I guess if the duties are prescribed by law.

MR. RILEY: It's a lot broader than just that.

MR. STOUDEMIRE: For instance, I would think that certainly the President of the Citadel is an officer, is he not---and he's not mentioned in the Constitution at all.

MR. WORKMAN: Well, that's debatable, though, because they held, for example, that Dick Jefferies was not an officer, whose position would be comparable to that of the President of an institution although the directors of the Santee-Cooper were officers and the Board of Visitors of the Citadel would be officers.

MR. STOUDEMIRE: All right. It has been held that a University trustee is an officer and it's not in the Constitution.

MR. HARVEY: Are we going to make any reference in here---we're talking about schools---to county or school district responsibility or are we just silent on that? Of course, the General Assembly, I guess, provides---

MR. STOUDEMIRE: The General Assembly provides for the maintenance nad support and I think you leave the General Assembly free here to provide it on a county bais---reasonable basis or whatever basis.

MR. WORKMAN: We don't have it now I don't believe.

MR. HARVEY: This section is sort of about local responsibility. Eliminate any reference at all.

MR. SMOAK: We have such a wide variance, though.

MR. STOUDEMIRE: As we get into more specialized education of different types, I can see very well where you forget about county lines and send the college bound student over to McCormick and the others to the vocational over to Edgefield or something.

MR. McLENDON: We've got a situation now, authorized by the past legislative session, district one in Marion and district two, by special act of the legislature, has formed a vocational education and we have set up a separate board to run it and we bus children from the high school from both districts so it's one school run by two districts.

MR. HARVEY: All right. I think we eliminate Section 6.

MR. STOUDEMIRE: Nobody wants to keep the poll tax, do they?

MR. McLENDON: No, I don't.

MR. WALSH: That poll tax thing costs more to collect---

MR. STOUDEMIRE: Yes, and we've heard the municipal treasurers where most towns, large towns, have gotten away from it.

MR. WORKMAN: Point of information. If we eliminate to taxable polls here, that, in effect, could strike the last portion of the poll tax power of the Constitution, would it not? We have heretofore removed



it as a voting condition and this is the last part.

MR. McLENDON: All right. We can move to 7. Well, a controversial sentence.

MR. STOUDEMIRE: It's out whether we take it out or not.

MR. WORKMAN: Yes. There's no use in fooling with that.

MR. McLENDON: I assume that we mean it goes out without comment.

MR. STOUDEMIRE: Now, gentlemen, Section 8. Now, we have covered this back in the statement we adopted a while ago under 5, "to support such other public educational institutions", you see. "Higher" and so on. Now, the question comes down, is there anything of a constitutional nature which remains in this that is not included in our broad statement we just adopted? I don't think this old "Act of Congress" here and so forth and so on, has any value any more, does it? Insofar as maintaining the sanctity of Clemson.

MR. WALSH: I believe it's been completely superseded.

MR. HARVEY: ---"funds to be applied as directed in the Act".

MR. STOUDEMIRE: So, it's my feeling to eliminate the whole thing and allow for it in your general mandate of higher education.

MR. McLENDON: Further elucidation of Section 8, or shall we---

MR. WORKMAN: Well, this business on scholarships, I don't know whether it's meaningful or not, but for years and years the General Appropriations Bill carried a proviso that there would not be scholarships. Is that still in there?

MR. McLENDON: There's no prohibition in in there, but there's no provision for them either.

MR. RILEY: How about the Citadel?

MR. WORKMAN: That's what I'm talking about, Dick, because Dad went to the Citadel, finished in 1909, on a scholarship which I think was a Charleston County scholarship at that time. And when I first started covering the legislature in 1946, it struck me that the opportunity which then existed, apparently was being closed because there was something in the Appropriations Bill which forbade such scholarships to state institutions.

MR. STOUDEMIRE: I think this is still there except for such things that they can honor the Boys State and the Girls State Governors.

MR. WORKMAN: This is aimed at saying that you can't apply State funds to scholarships, I believe.

MR. STOUDEMIRE: I think this is still true.

MISS LEVERETTE: Yes, that's still in there.

MR. STOUDEMIRE: Yes, because this is the thing that the University complained about---you know, your graduate students, competition with other states.

MR. HARVEY: This says, "may create scholarships".

MR. WORKMAN: This opens it, but the Appropriations Bill---

MR. STOUDEMIRE: A matter of legislative discretion. *8 Leveled*

MR. McLENDON: Section 9.

MR. STOUDEMIRE: "Property or credit of State of South Carolina, or of any county, city ---". All right. Here you are, gentlemen. This is aimed toward support to religious institutions and support to sectarian. Now, I didn't go into great detail here because I think you are generally familiar that under the federal government's constitutional provision under the religious clause---the way that has now been interpreted, does not prevent such things as making loans to the University, aiding students and all these other things that Uncle Sam is now doing in the way of education. So, then if you say strike all this out, is one possibility. I doubt that you'll go along with it, but nevertheless you would revert back to, I suppose, to the establishment of a religious clause, would you not? Well, let's look at it another way. Do we in South Carolina want to do for education, even though it be of a religious nature, the things that Uncle Sam is now doing--

MR. WORKMAN: I don't really think South Carolina---

MR. SINKLER: I don't think I want to either.

MR. STOUDEMIRE: That's the question I'm raising.

MR. HARVEY: I don't know about that. This is the point I was making. That the time may very soon be here where we---it's going to be more economical for us to pay two or three hundred dollars a year on girl to go to St. Francis for nurses training, rather than to spend ten thousand dollars to create the new dormitory and the new facilities at the Medical College. It's a matter of economics. The time may come where it's better to pay a couple of hundred dollars on a boy's tuition to Furman than it is to build a new dorm for him at Carolina.

MR. SINKLER: Aren't we going to expose the legislature to a new form of lobbying that they've never been free of for many, many years and aren't you really going to open a Pandora's box? I agree with you that if you could do this wisely, it would be desirable to do it, but you're going to have and then you're going to create, in my judgment, feeling among your religious groups themselves because in South Carolina what's going to happen is---and I'm a great admirer of them, too---the Baptists are going to run the show. I'd rather have them run the show, frankly, than the Episcopalians, of which I am one. They could do a better job, but I still am not ready for---

MR. STOUDEMIRE: The thing that I wonder about is this movement and how far has it gone. In the South Carolina Association of Independent Colleges they are developing this idea that the State ought to give grants to students to offset their tuition. Now, I have misgivings on this thing both ways. For instance, I noticed in the paper that P.C. is raising its tuition next year, I believe, by better than \$400.00. Now, you see---only thing I'm trying to see is how much of a lobby or interest group there is for some type of---

MR. SINKLER: You are going to get into this hospital situation thing, too. What would you have had here in Columbia?

MR. WALSH: Here's one side of it too---

MR. SINKLER: You've got the other situation, too. There's a little Catholic hospital over Dillon.

MR. McLENDON: It's the only one.

MR. SINKLER: And you wouldn't get anything for that poor little hospital.

MR. STOUDEMIRE: Well, you see, I look at it from the other standpoint, too. I finished Newberry and I have just a little bit of Furmanism in me---what would this mean about the State controlling Newberry if you start giving money to the schools, so I look at it the other way, too.

MR. SINKLER: That's a very valid point.

MR. WALSH: Let's think about it from this angle which is just one side of it and that is that in this State almost half of all your college graduates come from your private institutions, most of them religious affiliated institutions. They're not controlled by any religious body.

MR. WORKMAN: South Carolina has the highest percentage of non-public higher educational institutions.

MR. WALSH: Higher than any state in the Union. They are reaching a point where the costs of that education are so outstripping their ability to provide it, that we are really at a crossroads in higher education right now in South Carolina. If we had to duplicate tomorrow the facilities that would take care of those students, there would be no money to build it. It would be just physically, absolutely can't do it. Now the idea of the independent colleges and they have been to the Higher Education Commission on it---this is not a grant to the college. It is merely an effort to equalize what they have to pay at the private institution as against what maybe Carolina charges for tuition. Purely as a grant to the student because what is more economical than---Wofford could take 250 more students through a grant. Just like the situation you've got in Spartanburg now. You've got Spartanburg Junior College, Converse College and Wofford. Now, there are three institutions that can take care of most any situation they come up against, but there was a clamor for a branch of the University because they couldn't pay the tuition charge at that school and the cost of putting that additional branch there would have supported hundreds of students as long as you and I will live.

MR. SINKLER: Well, if you're going to do it, tie it to a statewide system of grants for higher education without---leave in this business of "no appropriation to any college directly or indirectly". You've got to apply it all the way through the whole field and evolve a pattern by which the State may make contributions for tuition without any control on the institution. In other words, you have some control---say, it has to be within South Carolina, but tie it to the student and not to anything else.

MR. STOUDEMIRE: That's the way Alaska is doing it.

MR. WALSH: A number of states have used some system and they have found no interference, have found no problems arising.

MR. WORKMAN: The precedent that was established many years ago at different levels---Louisiana---Huey Long put in the State appropriations to provide free text books to parochial children as well as to public school children and that went to the Supreme Court held that here the aid was to the child and they sustained it. Since then California and New York and the federal government, itself, in the G.I. Bill after World War II provided that public funds could be allocated to an individual and he could make his own choice as to where he went---to church school, parochial school.

MR. STOUDEMIRE: We don't know what the Louisiana Constitution said, though, you see.

MR. HARVEY: It prohibits that.

MR. McLENDON: This would---



MR. SINKLER: Now, we can't give money to the guy who's going to the University because he is already being cared for.

MR. STOUDEMIRE: What I'm wondering about---how much are we violating this Section now? Are State and local funds being used now, legally or illegally, to aid private hospitals, orphan houses, institutions, societies and so forth.

MR. SINKLER: In the case of the hospitals, you'll find that certain counties in the State where there are appropriations for contracts that are made by which the private hospital will take care of the indigent sick. Roper Hospital, for example, was one for many years. It's divorced from it now. That wasn't challenged, but at the same time Roper Hospital couldn't get a bond issue out of Charleston County to build a building and that's the way it should be, as I see it.

MR. RILEY: This is talking about everything State and county, though, isn't it? It says any public funds---

MR. SINKLER: Well, this would open it to everything, City and everything.

MR. RILEY: Would not this prohibit the grant---say, Furman University receiving from the federal government?

MR. STOUDEMIRE: I don't think---

MR. SINKLER: This is referring to state agencies---

MR. STOUDEMIRE: State of South Carolina, I think. The way I interpret it.

MR. SINKLER: Well, it says 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---"

MR. RILEY: That's right broad.

MR. SINKLER: It means the public money of the State of South Carolina.

MISS LEVERETTE: Well, didn't we do something like that---that old situation here where we would provide the money for a student to go out of the State.

MR. WORKMAN: Yes. That touches on something Huger was talking about sometime ago. We have established a precedent of providing State subsidy for students who go out of South Carolina to institutions in other states for lines of study which are not open in the State. Now, most of these are public institutions, but not all of them.

So, it was possible for a student from Orangeburg to go to Meharry in Nashville which is a non-public institution and there get a medical education, partly or substantially subsidized, by South Carolina although the student himself had to put some money in it.

MR. McLENDON: Don't we send dental students to Emory?

MR. STOUDEMIRE: And this would be contrary to the Section, then, if it were strictly enforced?

MR. WORKMAN: Yes.

MR. HARVEY: Looks to me like it is a legislative matter.

MR. WALSH: Seems to to me, too.

MR. HARVEY: I wouldn't shut the door.

MR. WALSH: I think if the legislature can work out an acceptable formula and I would say that they would pretty well reflect what the people would be willing to buy on this---in this area.

MR. SINKLER: I wouldn't like to see the legislature subjected, though, for requests for direct appropriations and therefore I think you've got to cover it. I don't think you can just sweep it under the rug.

MR. WORKMAN: There would be an awful lot of log rollers. You're going to have \$100,000.00 to Newberry.

MR. STOUDEMIRE: You haven't swept it completely, now, because I would come back and base my case on the Declaration of Rights, on the religion clause. You've got that. I would say it sums up thus far under the religion clause---is given to the person, by and large, they have made some grants for building and so on. But most of that stuff has been to this person and I don't know how much further than that the courts would let you go.

MR. WALSH: I'm just wondering if we shouldn't have a little further study on this. I have a feeling that perhaps some other states may have this. Maybe there are some decisions that could help us. You don't think so?

MR. STOUDEMIRE: I don't think so. It is all a matter of how you feel. You see, we have been much more fortunate here than some of the other states where your religions are not as sharply divided, you see. For instance, in New York it's been the other way around. It's where your religious groups have brought the pressure to get.

MR. SINKLER: That's what I want to avoid.

MISS LEVERETTE: Well, how about your tuition grant program?

MR. SINKLER: I'd rather it be done and be illegal than have the legislature subjected to Furman, Newberry and everyone of them wanting a new building.

MR. HARVEY: Tuition grants excludes parochial schools.

MR. WALSH: What about this that the Alaska Constitution has in it where it says, "No money shall be paid from public funds for the direct benefit of any religious or other private educational institutions"? To what extent would that---grant for, say, subsidizing tuition to individuals.

MR. STOUDEMIRE: You see, I think that's put there purposely to counteract our phrase, "directly or indirectly". For what it may be worth, I think what they're doing is skinning the cat in that direction. Old constitutions--others have this "directly or indirectly". For instance, New York State now has been doing a great deal of contract. Getting around some of their things. But, of course, you know the public institutions there, outside of New York City, is a new thing, more or less. New York State has done a lot of contracting.

MR. WALSH: One of the things that came out of this New York Convention was the public assistance to private and religious schools on a very broad scale which seemed very wise.

MR. STOUDEMIRE: Are we now furnishing school bus transportation to any kid going to parochial schools.

MR. WORKMAN: This is a very fundamental question we've gotten to now. Whether we are going to put in the Constitution and if we put it in, to what extent?

MR. STOUDEMIRE: Emmet, to answer your question a while ago. Yes, you can do more work on it, but I don't think it's going to help you make up your mind. I think this is something you've got a feeling about and the feeling is not necessarily based on precedents from another state although some of the others can show you what you might need to avoid.

MR. WALSH: I would say this. My feeling on the thing is that we ought not have it so wide open that you can just run out and say, well, we're going to appropriate two million dollars to Furman this year, a million dollars to Wofford. But I don't think we also ought to have it so narrow that we could not use some system of grants to students, or some way, to utilize our private institutions. Otherwise we're going to be confronted with a cost situation that is going to be impossible to grapple with.

MR. McLENDON: How to hit that medium, I'm not sure.

MR. SINKLER: That can well apply to hospital situations.

MR. RILEY: The thing about it is, if we're going to leave it open to where it can be used to a slight degree, relatively slight degree, or any degree at all, then it wouldn't be a constitutional matter. We're talking now about what the legislature will do or General Assembly will do with it. It would look to me like from a constitutional standpoint, rather than saying, "no, not at all", we'll say, "yes" and then go into the details. Then we're getting into legislation. We just ought to say, in my opinion, that we would say nothing at all, or exclude it altogether from a constitutional standpoint.

MR. WALSH: Dick, what would you say---down at the bottom of page 14 that we go to something like in Alaska which would permit this system of tuition, but would not permit us to just appropriate two million dollars for Columbia College.

MR. RILEY: That would permit a tuition type thing, wouldn't it?

MR. SMOAK: If you got into this tuition type thing, it would have to an across the board proposition, wouldn't it? And the same type student, in whatever category you selected, in any institution, I suppose---if he qualified or fell within that group, he'd be entitled to it. You'd eliminate, to a degree, your pressure groups.

MR. STOUDEMIRE: I would think that the public clamor would be so great for this that there would be a tremendous public force before the General Assembly, I think, would get into this thing. Once you get in, you can't get out. It is my own feeling that it would take quite a movement to get the General Assembly to appropriate money.

MR. WALSH: What do you think about this Alaska?

MR. RILEY: I like that. We might ought to broaden on "money" some if we use that. For instance, "money, property or credit".

MR. STOUDEMIRE: We have to take care of it here or back when we get to Taxation and Finance. This thing is much broader---

MR. SINKLER: Narrow that down in the finance section. I'd buy this one from Alaska tentatively.

MR. RILEY: That doesn't say we will do it the other way, but that would be a broad, safeguard in the Constitution that it would not be done this way.

MR. SINKLER: I want to say that you can't make a direct appropriation to a hospital or to a private college.



MR. WORKMAN: This, I think, would eliminate that.

MR. HARVEY: You don't want to say that you can't give some aid, though, through grants.

MR. SMOAK: From a legal standpoint---we've probably all agreed on that.

MR. STOUDEMIRE: I think you would be wise to tentatively adopt this thing and let this whole idea soak in over the next six weeks and keep thinking about the thing. Because this does move us on and yet I think it is such a fundamental issue that I don't believe you want to foreclose further discussion if someone does come up with some serious misgivings on it.

MR. McLENDON: All right. Is it the consensus that we eliminate Section 9 and substitute part of, along with Bob's suggestion here, the Alaska sentence there. On the bottom of page 14.

MR. STOUDEMIRE: From my notations in here, this would definitely show that it would not be the intent to make direct building grants and so on. Is that---?

MR. SINKLER: Or loans of the credit of this State, but merely to permit a system of tuition grants to aid students.

MR. HARVEY: Directly or indirectly.

MR. SINKLER: I don't want students going to Yale or Harvard either. I want them to go to South Carolina colleges if we're going to do it.

MR. WALSH: I doubt very much that the General Assembly would be inclined to appropriate to any who are going out--- It would probably be to a South Carolina institution.

MR. McLENDON: Section 10, page 15.

MR. RILEY: Bob, let's remember to get into that about the credit of the State. Over in the Finance section.

MR. STOUDEMIRE: If we don't care for it there, we will still--- I think that is a constitutional question, really. Gifts. "All gifts of every kind for educational purposes, if accepted by the General Assembly, shall be applied and used for the purposes designated by the giver, unless the same be in conflict with the provisions of this Constitution."

MR. SINKLER: That's the Clemson, strengthening Clemson again.

MR. STOUDEMIRE: But, does this serve any useful purpose now?

MR. SINKLER: No. It's the Clemson will.

MR. STOUDEMIRE: If you accepted my will, you'd have to---if I willed the State of South Carolina a million dollars for the University, they'd have to apply it to the University, wouldn't they?

MR. SINKLER: The whole thing ties into the Clemson will. I don't believe it's needed any more.

MR. HARVEY: Eliminate it.

MR. McLENDON: Section 11.

*section 10*

MR. STOUDEMIRE: "All gifts to the State where the purpose is not designated, all escheated property, the net assets or funds of all estates or co-partnerships in the hands of the Courts " and so forth. Now, I don't think this school fund is any longer used. Now, we still have a school fund in the budget, but I don't think it's this constitutional school fund.

MR. SINKLER: Well, it's peanuts anyway. Doesn't serve any useful purpose.

MR. RILEY: Let's just leave that out.

MR. WORKMAN: Should not, whatever benefit this serves, just be transferred to statute?

MR. HARVEY: We'll still get some money, Beaufort County, on a fund---has to do with this direct tax---it's an old Civil War carry-over from somewhere.

MR. STOUDEMIRE: Section 12. He who can explain it, I tip my hat to him. I always thought this liquor was part of Roosevelt's prohibition.

MR. WALSH: No. This was Tillman.

MR. STOUDEMIRE: I didn't realize it went back that---I looked at a court case---that was back to the old poll tax, you see, but I still can't figure it out.

MR. McLENDON: They must have made this one up the night before the convention adjourned.

MR. SINKLER: Well, this was an attempt, really, to block what became the 6/o/1 law, if you'll analyze it. This, really, is the thought back of it. You had your constitutional three mill tax which was apportioned on a statewide basis and the anti-taxpayers didn't

want any more supplementary taxes---the supplementary taxes they're talking about are supplementary statewide taxes so the proviso was to let this thing go to the schools and cut down this pregatory thought.

MR. WORKMAN: Well, it's a sop to the feelings of those people who resented and fought the State's going into the liquor business at all. They said if we're going to do that, we're going to apply it to the worthy cause of education.

MR. STOUDEMIRE: Gentlemen, it is my feeling that we were not dealing with the unholy subject of whiskies that you would probably let the whole thing fall. Now, with the whiskey situation as it is, you might still want to let it fall. I'll give you an idea down here at the last page, "After allocations authorized by law for municipalities and counties, the net income from taxation of alcoholic liquors, wines, and etc. shall be used for public school purposes". You see that's about all that's still in there that's valid.

MR. WORKMAN: And that's nothing but words. It's like the sales tax.

MR. STOUDEMIRE: That's right. So the question is whether you want to delete the thing that applies to liquor and bring this all back into the propaganda mill or whether you want to satisfy the opposition and put a statement in as I see it.

MR. McLENDON: I think if it's---

MR. WORKMAN: This may prejudice the enlightenment of the electorate. The people are less interested now in specific allocations and they realize that tax moneys collected go into a pot from which they are dispensed to meet the needs of the State, whether it be for education or anything else. This effort here of the old earmarking which this does, and which sales tax does is just verbiage because the financial arrangements don't work out that way. These dollars all go in and so much comes out. If somebody challenges it, they say, well, it did go because look, we spent 150 million and we didn't take in but 100 million so it all went for that.

MR. STOUDEMIRE: It's a question of wet and dry. When liquor comes up---when we get to it---you can make it wet or dry.

MR. SMOAK: You know the only thing is, Bill, talking on a state level, talking about school and financing is sort of like talking about the Vietnam war and the federal government---you can excuse anything on that basis.

MISS LEVERETTE: I have the feeling the electorate for the most part---

in the back of their mind, if they think at all, they think very heavily on this thing, Bill. It's a sop to some of their conscience--- it's a feeling of well, all right, we've got the liquor here, but we are doing some good with it.

MR. SMOAK: Gives us legislators something to say sometime.

MR. LEVERETTE: Also, I think if it is taken out it would have a reverse effect. The public would think we were trying to pull something on them.

MR. WALSH: I rather think we'd better put something in there like Bob has down here.

MR. SMOAK: That's good, clear language.

MR. STOUDEMIRE: Where is the wet and dry?

MR. WALSH: Bob, you don't want to move it too far.

MR. RILEY: I have to go along with my friend, the editor, on discussions at this point because I'm basically opposed to these restrictions on funds where they don't serve any real useful purpose.

MISS LEVERETTE: I am, too, Dick, but the reason I mention this is that I have a feeling---personally, I just think to take it out---

MR. McLENDON: There are two sides to it.

MR. STOUDEMIRE: The liquor question, really, as it affects people voting on the Constitution is going to rise and fall on the basic provision on wet and dry and bars, I think, rather than a little clause like this.

MR. SINKLER: I don't think this does any good.

MR. STOUDEMIRE: In other words, we're going to have to face when we get to it, are we going to advocate open bars or not. Or leave the Constitution as it is. I think that's your significant vote when it comes to people who have strong feelings one way or another.

MISS LEVERETTE: I personally feel that it ought to come out, but I was thinking in terms of a lot of people feel strongly about this thing.

MR. RILEY: I kind of feel like, Sarah, as we discussed the other day, though---on something like this we almost have a commitment, I would say, at this point to do it like we think it ought to be done and then we might even support changing it in the future for political purposes of getting it passed, but I feel like the Committee ought to---people look to us and say, they're saying that's



how it ought to be even though it will be hard to get it passed.

MISS LEVERETTE: You're right.

MR. HARVEY: This is a point.

MISS LEVERETTE: We'll have to remember this. There have been some occasions at our last meeting that we did not remove something for the very reason that we didn't think they'd accept it.

MR. RILEY: Several times.

MR. STOUDEMIRE: General liquor clause doesn't cover that.

MR. WALSH: I'll say this. I kind of agree with Bob. Actually I think this might help things a little, but if the question of liquor is going to determine whether amendments are adopted or not adopted, it's going to be on the question of what we put in the other section.

MISS LEVERETTE: I don't hold any brief for this because I do agree with Dick that if we're going to do it the way we think it ought to be done and not use this reasoning that it won't be accepted---

MR. SINKLER: I move it goes out.

MR. McLENDON: Mr. Sinkler moved that the whole Section 12 be eliminated. All right. How do we feel about it? All who want it out will raise their hands. Six to two. All right. We'll pass on now. Now, we're down to corporations. Since Huger said he couldn't be here tomorrow, what is your idea about proceeding---

MR. HARVEY: I say let's go into fiscal if Bob's ready.

MR. STOUDEMIRE: You want to start taxation or you want to start debt?

MR. WALSH: I think we're just going to have to start at the beginning and it's not necessary to take up one or the other.

MR. McLENDON: It's number 5.

MR. STOUDEMIRE: This paper, had Jim Larson at the University to do. He knows a good bit about taxation, but you see, the trouble is the darn thing is so hodge podge---O.K. you will notice that he starts off making a few general statements, then he shows you what the Model says, at the bottom of page 1 and the top of page 2 and that's all he has to say---which, in effect, says the General Assembly has full authority to do most anything it wants to do, to levy most any tax it wants to do, so long as it is for a public

purpose and the appropriations are properly made. That's what all that boils down to, plus the budget thing there.

MR. WALSH: Really, in this connection, it seems to me that the only way to approach this would be for us to try to analyze, discuss and decide upon some sort of basic questions. Having decided upon those, then we would have to request Bob to try to re-work everything to fit in the framework of those decisions. It's going to be pretty hard with the debt here, taxation here or am I way out on that?

MR. STOUDEMIRE: Not so hard, Emmet, think a minute. Now, am I not right? Restrictions on the South Carolina General Assembly power to levy taxes is restricted to property tax, is it not? I believe there's a thing on graduated income somewhere.

MR. WORKMAN: Income reference. It's an intangible reference.

MR. STOUDEMIRE: But intangible comes under property, really. In other words you've got a graduated income tax provision and then you've got certain know hows and certain specifications for the property tax.

MR. WORKMAN: Poll tax which we just knocked out.

MR. STOUDEMIRE: Yes, but everything else, so far as I know, the General Assembly is free to impose a tax on whatever it will. Whether it's gasoline---there's no constitutional restriction on that by earmarking gasoline is there?

MR. SINKLER: Let me make one observation---two observations when you're talking about taxation. For many years we used to be asked to put in an opinion on State bonds. There is no limitation in the Constitution of South Carolina of ad valorem taxes which may be levied by the State. Now that . . . was highly significant among the insurance companies, the New York banks so I want to let that thought stay as it is because we're getting into awful rough times on interest rates, debt management and handling bond issues---is getting tougher and tougher as days go on. You don't know what to do or how to advise people. The other observation I want to make is appropos of something you told me this morning, commenting on the growth of Aiken. I don't know how it happened, but we managed in writing our Constitution of 1895 to insure the development of Charlotte, Augusta, Savannah and almost Wilmington and Asheville because of our silly laws with respect to the levy of taxes, partial statutory and partial constitutional---when it came to levying taxes so that everyone of these towns that I'm talking about became a warehouse town for the purpose of supplying South Carolina and had our Constitution been worded differently and had our tax structure been worded differently, Augusta would be half its size, Charlotte wouldn't be nearly as big as it is---so that's---don't want to ever lose sight of that when we're writing this thing because we made a

perfectly horrible blunder and we're a long ways from overcoming it.

MR. STOUDEMIRE: Have we done it by law or by Constitution, Huger?

MR. SINKLER: I think we've done it by Constitution providing for all property being taxed on the same basis. That's the Constitutional weakness. I don't know the answer, but this is really vital to the welfare of our State that we handle this particular area intelligently so that we don't build these cities up any more. Let them grow naturally, fine, but don't let us build them up.

MR. WALSH: I don't know that that is the key. Another key is that as a practical matter Spartanburg, Greenville have got to rely too much on business licenses. Charlotte can have a situation where they can put a big distribution center there and it's a great thing, they don't have to pay any license, but Spartanburg is so dependent on business licenses for revenue and there is no other source.

MR. SINKLER: Well, I think we've been growing on a more normal basis in the recent years because I think the Tax Commission and some of our statutes have worked around and the practical application by the Tax Commission by just plain Tax Commission fiat, rather than going by the law has to some degree eliminated some of these situations. Half of Augusta's drawing power at least is South Carolina. Pretty nearly, isn't it? We built the road to Hamburg before there was---

MR. RILEY: Huger, I'm not quite following you.

MR. SINKLER: I'm talking about taxation. I'm talking about the fact that all properties shall be taxed in proportion of its value and we have---

MR. STOUDEMIRE: Lack of classification.

MR. SINKLER: Lack of classification. I'm talking about the fact that our old stock of goods taxed---we had to tax it---

MR. RILEY: The Tax Commission has held that if it is a wholesale warehouse operation, it doesn't come under---You say that's kind of a---

MR. SINKLER: I say that's probably a Tax Commission fiat.

MR. STOUDEMIRE: Emmet, now, brought up a question I think we need to discuss. What shall be our general philosophy and, as I see it, it is in our Constitution now (1) you've got statements on property tax and you have a direct command that a graduated income tax be legal and other than that, the General Assembly is free and I think a decision on that is essential to what we do in here. Do we want to continue leaving the General Assembly free to impose taxes as it sees fit?

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MR. SINKLER: By all means because we've got other limitations in there.

MR. STOUDEMIRE: Property tax, I think.

MR. SINKLER: Well, I'm talking about this equal protection and equal quality of classes and the fact that they are prohibited from--

MR. MCLENDON: Well, how shall we attack this whole section? We've got to have some sort of order that we can progress in.

MR. SINKLER: Well, I think what we want to do---I think to really protect the State and I think that's what we want to do---we ought to give the General Assembly as much latitude as possible. Now I don't think we want to turn the General Assembly loose to the point that they could, in theory, impose a tax only on manufacturing enterprises and leave everything else free from taxation, but you've got some horrible situations in South Carolina that the legislature is going to have to rectify. Particularly in connection with ad valorem taxes.

MR. WALSH: They're not constitutional. They're statutory.

MR. STOUDEMIRE: Mr. chairman, I think the secret to our whole problem is decide what we want to do on the property tax. Decide whether we want classification and so on because this is germane to the right to restrict or to give cities power to tax and counties and everything else, I think.

MR. RILEY: Well, the way I read this thing, it doesn't have anything to do with what is taxed and what isn't as far as classification is concerned.

MR. STOUDEMIRE: The question is, do you want to allow---

MR. RILEY: Well, this allows it, doesn't it?

MR. SINKLER: For instance, "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".

MR. RILEY: But Section 6 on page 2 here, it simply says that "all property subject to taxation shall be taxed in proportion to its value". That would be consistent with the legislature putting classifications and saying wholesale products.

MR. STOUDEMIRE: That comes from the Bill of Rights, now, that we transferred, you see---and delayed to have it considered at this point. This is a Bill of Rights statement here. Article I, Section 6, but I think the heart of your question is, really, over on page 4,



Taxation and Assessment. Shall we have uniform rates, shall we have classification, shall we tax stocks and bonds, shall we not or shall we leave the General Assembly free to regulate property taxes as it sees fit? All these things

MR. SINKLER: I think you've got to spell this thing out. Let me tell you an actual problem that's really going to face the legislature in a big way this coming ~~year~~ <sup>year</sup>. I hope they're going to take some corrective steps. Recently, the railroads of the nation have waked up to the fact that these states have hodge podge systems of assessments and for instance, in Georgia their court held that they couldn't tax the Seaboard Railroad on---whose assessment was fixed by the State on, say, a 10 point basis and everybody else was on a 4% basis, then they would have to put Seaboard in the same classification. I have been studying this problem with Charleston's biggest taxpayer which is West Virginia Pulp and Paper Company and they've certainly waked up to this fact that they're a pretty hefty taxpayer. They're assessed under a 9.5 formula and everything else in Charleston County is on a 6.4 formula. Well, this case just knocks it out, but frankly, if we have to knock out that particular assessment this year, it really might upset Charleston's tax structure this year so we finally worked out a compromise on the assessment which they're not particularly happy with, but at least it doesn't upset Charleston's status. I don't know whether you're going to want to---I'm pointing that up to you. It's much worse in a lot of counties. For instance, in Pickens County---let's take some of those mills up there that are on a 9.15 basis of assessment and the average man's property in Pickens County is assessed at about a 2% basis and sooner or later someone's going to come along and upset that apple cart.

MR. WALSH: None of that is Constitutional---

MR. SINKLER: No, it points up the fact---I think you're going to have some areas of classification and I really think maybe the taxation of industry which does affect more than the immediate locale although they really support the local---there are no statewide taxes left---I think may that perhaps ought to be under the jurisdiction of a State agency. But you are going to have to---of course, you've got the federal due process question there and the regular due process question there. If this thing really got out of the box and this boy Joe Allen down at the Tax Commission, a very capable lawyer they've got down there, is smart enough to realize it, if this thing gets out of the box---under one decision there is an invitation to sue for six years' back taxes on the basis that it's an illegal---

MR. WORKMAN: It's getting out of the box day by day.

MR. RILEY: It's out.

MR. STOUDEMIRE: I told Joe it is a political question as well as a legal.

MR. WALSH: It is a matter, purely, of the legislature---

MR. SINKLER: It goes into the question of how much classification, how much power of classification you're going to give the legislature.

MR. WORKMAN: The legislature, under the Constitution, is not permitted to classify.

MR. SINKLER: You can't classify---for instance, they assess automobiles on one basis and homes on another.

MR. STOUDEMIRE: Gentlemen, would you buy page 5, the bottom which gets us an opposite of what we have now in South Carolina? The first one is just a very short thing from the Minnesota Constitution and the second one is how Kentucky worded in its new draft, a classification provision, which would reverse what we now are required to do in the South Carolina Constitution, except for stocks and bonds.

MR. SINKLER: Which do you recommend? Minnesota?

MR. STOUDEMIRE: I don't know. I haven't recommended either one, really. I'm just curious if this is the idea that you people want to get into. If it's not, then we've got to start on another alley.

MR. RILEY: Well, don't you think, Huger, there is a strong possibility that if we get into classifying property, then we are going to be out of conformity with the United States Constitution?

MR. SINKLER: No, I think they will uphold reasonable classification.

MR. WALSH: I'm not sure that "reasonable classification" is desirable. I think the only thing we need to do is not be discriminatory.

MR. WORKMAN: Let me raise a question on that classification thing.

MR. WALSH: What is being done now is pure discrimination, purely contrary to the Constitution, contrary to the laws. We are simply flying in the face of everything that is on the books and all we've got to do is enforce the laws as they are written and intended and these inequities that you complain of will not be there.

MR. SINKLER: Of course, what has helped this thing from coming up---there is a provision in our Constitution to the effect that all property shall be assessed at true value and they were afraid that if the---the industries were afraid that if they went into court, they wouldn't get any relief, they'd say, "What have you got to kick about, you're assessed at 9.5 and you should be assessed at 100%". The courts have now over-ridden that and say that the equal treatment over-rides that provision of the Constitution.

MR. WORKMAN: Is it not an argument for classification that if an individual owns a tract of land of twenty acres on which he has his home and just simply resides there and another individual owns twenty acres that he has converted to a parking lot or to a factory or anything---under our system, there's no legal means by which that commercial property which generates revenue (I'm talking about the real estate now)---that that commercial property can be taxed at a rate different from the property that you own which generates no revenue and which is a residential thing because real estate is real estate under what we've now got, but a classification would allow you to say that commercial properties or industrial properties of a given character are subject to taxation in one category. That means that Sangimore in Pickens and West Virginia in Charleston would be in the same category, they would be assessed separate, but it doesn't mean that the equal amount of residential acreage or farm acreage would necessarily be assessed at the same value because it's a different category, different classification of real estate and that's one of the arguments that I get when I talk to people--- is why all these inequities and why can't we do something about it? They say, well there's no basis in our Constitution which permits classified property according to its type.

MR. SINKLER: I would strongly suggest that invite Mr. Allen down to meet with us and that this problem be referred to him for his views in connection with it. He is looking in to it.

MR. WALSH: Why don't we request him, prior to that, to work it up.

MR. STOUDEMIRE: I talked to Mr. Allen yesterday---talked to him primarily, on how this over-abutting business got in there---

MR. SINKLER: One of the three Mauldin against the City of Greenville cases---

MR. STOUDEMIRE: Thank you. He is up on this and apparently is smelling far more rats on these things than even Huger---

MR. RILEY: Huger, isn't the theory behind the thing---that business property, by virtue of its depreciation, from a business standpoint, going down very rapidly, would be subject to a higher classification to be on an equal basis. Is that the kind of thing you're talking about?

MR. SINKLER: Well, I don't know. I really haven't got any fixed ideas because we certainly don't want to suddenly come up with a provision in our Constitution that tells new industries, "Look here, you're liable to pay the whole tax bill". We don't want to do that at all. We can't just say we want to have classification. We want to have classification, but we're going to have to put some limitations in there because this is our bread and butter. This is selling South Carolina to the public.

MR. WALSH: Here's the one thing which seems to me to be critical when Bob talks about property tax is our problem---of course, the Constitution talks about property tax, doesn't talk about anything else. The over-riding fallacy in our present property tax system and which, to my mind, Huger, has a far greater impact on answering the question why Augusta is big and why Charlotte is big, is that under our existing property tax system you penalize the man who will improve his property, therefore, there is a great advantage to leave your property vacant, hold on to it until the very last moment to let it go at the highest price. Now, I can give you an example of how that works in Pittsburg. If you've got one block of vacant land, absolutely nothing on it bringing in not a penny, you pay \$10,000 dollars tax each year on that. You put a 10 million dollar building on that and you still pay \$10,000 on that, plus a very small percentage on the building. Well, now, there, that man who has got a vacant lot in a really high value area, he can't keep that thing vacant long. He's got to---

MR. RILEY: More orderly growth of your cities.

MR. WALSH: Right. He's got to turn that thing loose and let somebody build on and get some income.

MR. WORKMAN: Well, that's developing now in Richland County. They are moving, without saying so, to taxing land on its highest and best use, but it is not being done uniformly throughout South Carolina.

MR. WALSH: It is so critical that I think we might have to think of dealing with it in the Constitution.

MR. WORKMAN: I think so, too and I would like to amend your suggestion about getting Joe Allen down here, that we would get Crawford Clarkson by invitation, who worked with the Tax Study Commission for years who is very knowledgeable in this field and also George Auld from Clemson. George is with the South Carolina National Bank now. The reason I suggest his is that I know, for the last twenty-five years, he has made a constant study of property taxes with particular respect to impact in rural communities. The farmer, the homeowner, small town and he has done books of studies on property taxes in South Carolina. If we can arrange for these three individuals to give us their ideas so that we don't overlook the rural man or the business man or the industrial man. I agree with you, Emmet, that this thing is of such significance that we ought to make a determined effort to get proper facts and to give our best thinking to it in our recommendations.

MR. WALSH: Why don't we ask Bob to contact these individuals you have suggested right away and ask them---explain our thoughts to them and ask them to summarize in writing for us. Sometimes I find that their



thoughts are more concise if they study it out and prepare it.

MR. RILEY: That would be better.

MR. SINKLER: That's right. I don't want to see them. I just want to get the benefit of any information they have.

MR. STOUDEMIRE: This inquiry would be directed specifically on what they think a constitutional provision ought to be on property taxation? Whether it ought to be uniform in all classes, whether it ought to---

MR. WORKMAN: And also---may I inject the idea that we get their thoughts on the taxation of intangibles. I had an individual get in touch with me within the last couple of weeks raising a very interesting point. He said, "Suppose I own a hundred thousand dollars in real estate and Mac owns a hundred thousand dollars in AT&T stock. Now, Mac pays income tax on the revenue that he gets from that stock. I pay income tax on the revenue I get from the use of that real estate, but, in addition thereto, I pay property tax on---there's my hundred thousand dollar worth of real estate that everybody can see and I pay property tax through the nose on that and he doesn't pay any property tax on his stock".

MR. SINKLER: You're sure going to drive people out of South Carolina if you go to that intangible tax.

MR. WORKMAN: I'm not saying go to it, but I'm saying what we ought to do is be in a position which I'm not now, to answer the guy that raised that question.

MR. STOUDEMIRE: For the matter of information. In the middle of this Section 1, here on Article X, the General Assembly is authorized to tax intangibles, is it not? But it really has never really done so.

MR. SINKLER: Let me give you the legislative history on that. I was in the legislature when that came up. That's Neville Bennett---did that to balance the budget in 1933 or '34 and we had this intangibles tax and it really just caused a furor. So as a consequence---

MR. WORKMAN: You put it on there?

MR. SINKLER: We put it on there without anything in the Constitution and the court upheld it. I was one of the lawyers in the case that lost the thing. I believe it was Marshall against the South Carolina Tax Commission if you want to read the case, Bob. So that this constitutional provision was written to restrict the power of the legislature after we---some of the people thought we'd gone hog wild. That's the limitation---that's the reaction, statewide reaction to South Carolina's intangible tax.

MR. WORKMAN: This limitation came in after the tax---

MR. SINKLER: After the tax.

MR. STOUDEMIRE: Actually that was ratified in 1932 by the legislature. That's what this amendment is.

MR. WORKMAN: The limitation was a reaction to the imposition of that tax---

MR. SINKLER: That's correct.

MR. McLENDON: Are we able in our work here to deal with this thing section by section as we have heretofore or are we going to have to condense this into a general act on the whole thing.

MR. STOUDEMIRE: You see, really, if you go back to Article I, Section 6, "No tax without consent". Section 7, "Declaration of Rights". "Taxes laid upon actual value", Article III, Section 29. Article VIII, Section 3, which concerns municipal taxes and so on. Article VIII, Section 6, "Corporate taxes" and so on. All hinges on what you are going to say on property.

MR. SINKLER: You've got to be sure that you're uniform. One assessment for all taxes. You can't turn the cities loose---

MR. McLENDON: How are we going to gather it together so we can make a decision?

MR. STOUDEMIRE: Well, I think we've got to first try to decide that we want this type of statement on property taxes, whether it be uniformity, whether it be classification or what. If you come up with classification, then how is this going to affect the City of Charleston and the City of Greenville. Is it going to have any direct effect on them that it doesn't have on counties at large.

MR. SINKLER: What we really need to have--I don't know whether this is possible or not---what we ought to have is uniformity of assessment throughout South Carolina.

MR. WORKMAN: That's true.

MR. SMOAK: I think that is the key of the whole thing.

MR. SINKLER: You really have got--the minute they took off---it all goes back to the 6/0/1 law which is a 1920 statute in which the legislature took the three mill constitutional and put a four mill statewide ad valorem tax and said that whatever you got out of that on the basis of their apportionment, that went to schools. Well, Charleston County used to get so little, they wouldn't take the \$200 because they had a high assessment down there. Greenville and the rest of them cut it down. Bob Figg and myself went to the legislature back in 19---what-ever year it was, we called the county board of assessment in before us

and said, "now you cut the assessment values in Charleston County by 25% . If you refuse to do it, we'll abolish your board if you don't do it." We got a cut across the board, 25% which gave us a little bit of benefit under the 601 law. Each county was trying to see how low they could make their assessment and grab more from the State. That's what got this thing really---

MR. RILEY: Before that, were they all on 100%?

MR. SINKLER: All of them---if you go back to when you had---when the ad valorem statewide tax really supported the schools, you did have a more uniformity of taxation throughout the State. Only when we abandoned the ad valorem taxation for school purposes, or for general purposes, for that matter, that this hodge podge of this situation resulted. That's the background of this thing. Now, for the purpose of industry which really is not a local matter, but is a statewide matter---either you've got to fix some system of classification---the minute you do that, you're telling the industry, "Look here you all are targets" or you've got to go back somehow or other to a system of equality in taxation, in assessment, done by a State agency rather than by local assessment.

MR. WORKMAN: They're moving in that direction.

MR. SMOAK: Isn't that the case?

MR. SINKLER: You've got all of these remedies, but the court has put so many---every case that goes up there the court finds some excuse to say that the taxpayer took the wrong procedure (just finished studying this thing).

MR. WORKMAN: We have got facing us now the necessity for determining some policy that we want to follow with respect to property taxation. And, Bob, the words that you use should certainly precede any invitation that we extend by saying "What do you think would be a proper constitutional provision?"because if we get into the problem of taxes---

MR. SINKLER: You might get, though, into the realm of assessment. You've got to say something about assessment.

MR. WORKMAN: But only to the extent that what should the Constitution say with respect to property taxation including such categories as classification, intangibles and assessments. Now, the assessment thing, regardless of what we say in the Constitution---I think we ought to say something as strong as we could---but the fact that there is strongly implied throughout the Constitution now, uniformity of assessment, it doesn't exist. That's going to ultimately evolve on the legislature and little by little we're moving in that direction. Brantley's crowd here took the lead in Beaufort. Charleston has had kind of an abortion with their business down there, but the one

factor that delayed the legislature from acting statewide has been this old fear that somewhere along the line they may throw a statewide property tax, and if Beaufort County has got a 100% and Richland County has got 50%, then he's paying a lot more than we are. Bit by bit the counties are moving into their own reassessment equalization program and when that gets over the 50% mark, then those counties are going to say, "O.K., we did it, everybody does it".

MR. SMOAK: But the trouble with all this, Bill, is that the counties are administered differently. You've got different pay scales for teachers, you've got a different set of school buildings. One county spends so much per student for buildings, the other county spends half as much and so on.

MR. WORKMAN: What we're aiming and what Huger's talking about, is the fact that we ought to have statewide a uniform assessment and then apply against that assessment whatever millage is necessary for the community.

MR. SINKLER: If you don't look at this thing statewide, you can very easily imagine areas that will make themselves more attractive to one industry than another area.

MR. SMOAK: That's true.

MR. SINKLER: What we ought to try to do here is look at the State absolutely as a whole.

MR. SMOAK: This enters into it.

MR. HARVEY: But aren't we talking about practice and not what's in here. It says, "The General Assembly shall provide by law for a uniform rate of assessment"--- We haven't followed it.

MR. SINKLER: I'm trying to say that we're going to have to do a little bit more legislation in this Article in the future, at the same time we're going to have to try to get some---we're going to have to give in certain areas. Perhaps in the area of classification.

MR. STOUDEMIRE: You see, your State Tax Commission now, by law, has authority, I think, to order reassessments starting tomorrow. The law is very strong on the Tax Commission and when you read their powers it scares you to death.

MR. WORKMAN: They don't exercise it. They're doing it now by request.

MR. McLENDON: By request.

MR. STOUDEMIRE: The General Assembly next year could re-enact a mandate that somebody proceed with doing it, right now.



MR. RILEY: Is there anything in any of these things that says there shall not be a State ad valorem tax. Would it be wise to consider putting something like that---

MR. STOUDEMIRE: No. I would disagree with that because who can say--- I don't think I'm thinking along the same line as Huger---I'm thinking who can say what South Carolina may have to use in taxation in 1985? The General Assembly may, through some type of emergency, have to revert to it. Anybody that can read the feelings at all, the General Assembly would rather almost die than start getting into a statewide property tax.

MR. SMOAK: Well, let me ask you another question. What about your industries generally around the State. Are they upset about this thing? Do hear much talk about it?

MR. SINKLER: I don't think so. I think the old industries are beginning to get upset because I think the Tax Commission has now come up with a formula by which the new industry coming in gets assessed at about 8% and the old industries are still on the 9.5 ratio so you've got a little due process question right there in the Commission itself, but actually, I certainly advocate anything like this, but actually, the reason why West Virginia Pulp and Paper Company is building an 80 million dollar plant in Kentucky as against Charleston--- I really thought we had it in Charleston a year ago this time--- their industrial bond act gives them free ad valorem taxation. West Virginia's tax in Charleston County is---I'm talking about 700 or 800 thousand dollars a year.

MR. STOUDEMIRE: I don't know what all Mr. Allen knows and he may know more than Huger---case he's referring to. He is running nervous in this whole field and I've got a hunch that somebody is grieving.

MR. WORKMAN: Well, Jack Grimbball has been passing a number of orders around on assessments in conjunction with efforts of the legislature. Now, the legislature, the Richland County Delegation, has undertaken to isolate from taxation personal property, except for automobiles, house trailers and boats to the best of my recollection. But that runs contrary to what the Constitution says. Because the Constitution says and it was carried for years on the Comptroller General's report that your watches, your pianoforte, your mules and everything else. You pay on your car and I pay on my car here in Richland County, but one of these people who has a hundred head of Black Angus cattle down there on the hoof, he doesn't pay on that. Not his personal property.

MR. SMOAK: He's supposed to.

MR. WORKMAN: Not in Richland County.

MR. STOUDEMIRE: What Joe is breathing nervous about is industrial property.

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MR. WORKMAN: We've gotten ourselves into a tax argument. I go back and suggest that we just invite these guys in, or get a statement from them.

MR. SINKLER: And we defer action until we get this.

MR. STOUDEMIRE: Does anybody know what the Tax Study Commission might already have said on this?

MR. WORKMAN: Crawford Clarkson can give you the whole works on it. I think I've got most of their publications. They've not gotten into this thing of classification.

MR. SINKLER: I talked to him on one occasion and I think he feels rather strongly that there should be classifications.

MR. STOUDEMIRE: Guess we can take up Section 2, though, where you're going to have a balanced budget.

MR. RILEY: Excuse me. When we talked about classification, we didn't talk about classifying differently for assessment purposes.

MR. HARVEY: Doesn't the word "uniform" cover that? Uniform within classification.

MR. STOUDEMIRE: Read page 5. Shows you what Minnesota does about classification. That's the general idea, I think, what they mean.

MR. HARVEY: You have uniform---you can still have classification, can't you?

MR. RILEY: I was thinking of the questions were going to ask these gentlemen to discuss. One would be the classification question as it pertains to assessment. And that's just one question. We're talking about assessment and classification.

MR. SINKLER: I think you have pinpointed it.

MR. McLENDON: Bob, what do you suggest---

MR. STOUDEMIRE: Well, on page 6 we have this Expenses of state government which I think we can decide upon. "The General Assembly shall provide for an annual tax sufficient to defray the estimated expenses of the State for each year, and whenever it shall happen that the ordinary expenses of the State for any year shall exceed the income" the next General Assembly makes up for it, isn't that what it says?

MISS LEVERETTE: Bob, could I delay this for one second and ask you if it is feasible for you if you get answers from these three to let us have copies of them before this meeting.

MR. STOUDEMIRE: If I get the answers.

MR. WALSH: I expect that if they are really interested, in two weeks they could put together their thoughts. Every one of these people have thought about it---

MR. STOUDEMIRE: The people that you named, I think, have this upon their heart, so to speak. For corporations, you see, I called Mr. Knowlton on Tuesday and I had his reply in my office on Wednesday afternoon.

MR. HARVEY: I think this Section 2 is a healthy section.

MR. STOUDEMIRE: My observation of the South Carolina General Assembly over the years that if somebody had called attention to this thing it would have done good.

MR. McLENDON: The Speaker relies on it every morning.

MR. WORKMAN: It gets a lot more reliance in the House than it does in the Senate. Let me throw out an item for consideration with respect to this, and this is based on what has been done in State departments over a period of years with respect to fixing their budgets---arriving at something which would be a relatively fixed figure so that you don't go through this juggling business which kind of adjusts itself to the needs of the Ways and Means Committee as you go along. Now, the essence of this is something that was practiced I think successfully in Arkansas---this was about 10 years ago--"the State Budget and Control Board, prior to each regular session of the General Assembly shall make an itemized estimate of the revenues expected to accrue to the State during the fiscal year beginning the following July 1. Such estimate will be based upon the tax laws in effect at the time of making such estimate and shall not exceed the annual average of revenues collected during the preceding three years, adjusted so as to reflect anticipated collections from taxes not in effect during the full three year period. The General Assembly shall not make, the Governor shall not approve appropriations exceeding the revenue estimate herein described unless such appropriation be accompanied or preceded by revenue measures capable of meeting any deficit which might otherwise develop due to disbursement of such appropriation".

MR. SINKLER: That's window dressing because all you've got to do is---suppose you estimated on the basis of preceding, which isn't fair. in our cheapening dollar situation that you've got. Now all you do is come along and pass some silly little tax and assume that that will---so I don't think that's as good as what we've got. None of it can bind a legislative body and I think this that we've got is about as nice as anything.

MR. McLENDON: Estimating income, according to this language, you'd be estimating it at November and December. We run into the problem

now that the Ways and Means Committee and Pat Smith estimates it January, February and March and now the Finance Committee they estimate it two or three million more dollars. I think we say it tighter. Are we generally in accord that Section 2 is to be left as is.

MR. STOUDEMIRE: All right. Section 3 now. "No tax shall be levied except in pursuance of a law which shall distinctly state the object of the same; to which object the tax shall be applied." I think that's a nice sounding statement, probably meaning nothing.

MR. HARVEY: That's tax and classification.

MR. SINKLER: Oh, yes it is. It's designed to prevent a Governor's decree imposing a tax and a lot of things like that. That goes back to colonial days.

MR. HARVEY: You don't state the object of the taxes.

MR. WORKMAN: Yes.

MR. SINKLER: Yes, you do.

MR. HARVEY: For school purposes and ---

MR. SINKLER: Well, don't you know those cases? You've got one case from York County.

MR. McLENDON: What does the word "distinctly" mean if they're going to state the object? Aren't you going to state it?

MR. SINKLER: Take out all of that---one of my rules.

MR. WALSH: I think you might want to dress that up a little bit, but I think that's pretty good window dressing.

MR. McLENDON: Do you like that word?

MR. WALSH: I think that's pretty good window dressing.

MR. STOUDEMIRE: You could say here, "No tax shall be levied except in pursuance of law for a public purpose".

MR. SINKLER: Well, why don't we leave---

MR. McLENDON: Just leave it like it is.

MR. SINKLER: Well, now, the public purpose thought is a very good idea. It's what you're really getting at because you sometimes have to rely on due process to---you're going back a great many years with that. You're going back to tax by royal governors decree and that sort of thing.



MR. WORKMAN: Isn't this as written, Huger, an invitation to earmarking?

MR. SINKLER: Well, it produces some weird results. There was an appropriation for some nursing homes in York County and they didn't build them and they wanted just to convert it to ordinary county purposes and they got into trouble with the courts. It's been some time since I've read that case. I like the thought of public purpose. What the object is, you levy a tax for education, you want it spent for education, you don't want the legislature to pay bills for champagne. Getting back to the feeling of the people who wrote the last one in '95 although this goes back, I think, probably to earlier constitutions than '95. You think you might find it in some of the others.

MR. WORKMAN: Would it improve the wording, in your thinking, to say, "---except in pursuance of a law which shall state the public purpose of the same".

MR. SINKLER: You need the diversion thought in there, too.

MR. WALSH: I think you need that.

MR. SINKLER: That would save the Highway Department, that section.

MR. WORKMAN: Well, it was in lieu of "the object". When you say "public purpose", should we say, "No tax shall be levied except in pursuance of a law which shall distinctly state the public purpose of the same".

MR. SINKLER: That would improve it. Yes.

MR. STOUDEMIRE: "To which purpose the tax shall be applied."

MR. SINKLER: "And to which purpose." Now, leave it in there. You do get these weird results every once in a while where there's been a tax levy put on for a specific purpose. I'll try to read that York County case about the nursing home and try to send you guys a memo on it.

MR. STOUDEMIRE: I know, if you look at the average city, the appropriation ordinance, but most of the time they will say in there, "40 mills for general municipal purpose and 10 mills for debt" and so on---

MR. WALSH: "---5 mills for library and 2 for roads"---

MR. STOUDEMIRE: Are we going to leave it like it's worded or are we going to change it?

MR. SINKLER: Make just a few changes.

MR. STOUDEMIRE: "---in pursuance of a law which shall"---do that again William.

MR. WORKMAN: Come to the end of the second line, "---distinctly state the public purpose of the same; to which purpose the tax shall be applied".

MR. SINKLER: "proceeds of the tax shall be applied".

MR. WORKMAN: You might, "the tax revenues".

MR. STOUDEMIRE: Now, can we do tax exemptions without classification.

MR. SINKLER: Let's leave that thought.

MR. WALSH: I don't know, I think it might be well to discuss that a little bit. Get our ideas on it.

MR. WORKMAN: Well, we in Richland County, again, are inquiring into the legality of a number of exemptions which exist. Specifically at the moment, twelve institutions including Providence Hospital.

MR. WALSH: There's one thought I wanted to ask and, Bill, you might be able to enlighten me. How does the legislature pass these laws saying that this hospital, that Masonic Temple, Moose Lodge is exempt if this thing is correct?

MR. WORKMAN: I've been yapping about that for fifteen years and every time that the Woodmen of the World---these things---this has been absolutely no deterrent as I've been able to determine, on legislatures granting of tax exemptions. In many areas this is a lot more restrictive than many people realize because it would say that the Baptist Hospital is properly entitled to tax exemption but if a lot adjoining the Baptist Hospital and owned by them is used as a parking lot, whether or not it derives revenue, it is nevertheless taxable because it is not a part of the hospital and if the Baptist Hospital or a school owned property elsewhere and there's no school on that property, that property is taxable.

MR. WALSH: That goes back to the Wofford College case where they had a lot of rental houses and they held they had to pay taxes on all of them. Isn't this a good thing because it seems to me that everything that you do is a good purpose. I might have a good library in my house. I might let some of the neighbors children come in and read, that's a good thing. Why shouldn't you exempt me from paying taxes? Where you going to stop on something like that?

MR. WORKMAN: The way this is worded, I think, is pretty well worded. The question is how are we going to make it stick. Can we put any self enforcement provisions in there or what because it is generally ignored by the legislature.

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MR. WALSH: I think that the general idea of this good and that it would be a great mistake to take it out even though it's not being enforced.

MR. STOUDEMIRE: There must be a shorter way of saying it.

MR. WORKMAN: Yes, it is right verbose.

MR. HARVEY: I don't think naming names, "idiotic" and "indigent".

MR. STOUDEMIRE: "There shall be exempt from taxation all county, townships, municipal---used exclusively for public purposes and not for revenue"---. Can a government owned property be used for anything but a public purpose?

MR. SINKLER: Look out for that "and not revenue". You've got situations now and well---a parking lot---

MR. WALSH: How about your water works?

MR. SINKLER: I'm thinking of the Greenville water works and the Charleston water works and things like that.

MR. HARVEY: They don't pay taxes.

MR. SINKLER: No, but I'm talking about---they make revenue over and above---they've got to do it from a practical standpoint. If it hadn't been for a few waterworks in this State, we wouldn't have any industry. We recognize that fact and they all borrow on revenue bonds. If the City of Charleston suddenly bought a piece of property over in Berkeley County for development purposes, they'd pay taxes on it. When they start acting in their proprietary capacity---occasionally cities and towns have inherited---. I haven't got any thoughts, probably the best way to leave it is where it is, but we don't want suddenly to have a waterworks system that extends beyond a county line, suddenly find the other county start taxing it.

MR. WALSH: What about dressing this up? I think the general idea of this thing, I think it's pretty good to leave it in there.

MR. SINKLER: Why don't we do this, now? Here's what we can do---get a little specific when we get down to our problem and eliminate waterworks systems owned by municipalities.

MR. RILEY: Well, Huger, when you say "exclusively for public purposes and not for revenue"---if they're getting a profit out of the waterworks system and that profit is being put to public purposes---

MR. SINKLER: Probably.

MR. WALSH: Revenue is just an incidental part.

MR. RILEY: What they're talking about is money making things that would get out of the public purpose realm.

MR. SINKLER: Blacksmith shop that the court entered in one of those Mauldin cases in Greenville.

MR. WORKMAN: This is almost a contradiction in terms because it's not hardly conceivable that they would have thought of any governmental enterprise originating revenue which would not go to public purposes.

MR. SINKLER: Oh, yes. Railroads. Oh, railroads. All of them were speculating in railroads. That's what they're talking about.

MR. RILEY: Is that right?

MR. SINKLER: Sure. That's what they're talking about.

MR. WALSH: They didn't want the government going into railroads, but they positively contemplated that municipalities would have their own light system and water system and gas system and ice system. They provided in the Constitution.

MR. SINKLER: That provision of the Constitution is the result of the debate between Clemont Haynesworth's grandfather and Mr. Findley Henderson's father from Aiken. It follow the first Mauldin case in which Greenville was not allowed to have its electric system and it came in as a compromise---the election provision of Section 5 of Article VIII which you're talking about now. They have to have a petition and election before you can establish a waterworks system in South Carolina. They thought that was a field for private enterprise. The only exceptions in South Carolina were Port Royal in Beaufort County and the City of Columbia. They made Columbia get a municipal system back in the 1830's. Charleston, Spartanburg and Greenville never got their water systems until the teens. Old Mr. Haynesworth spent his life preserving the Paris Mountain water system.

MR. WALSH: We bought the system from Henry Cleveland. Henry Cleveland had some buildings on the corner of North Church and Main Street that were built when he owned the system and he never put meters in.

MR. SINKLER: Let's go back to this 4 of X. Let's carry the thought forward.

MR. WORKMAN: I think all that can be done with Section 4 is try to tighten up the language.

MR. STOUDEMIRE: You want to make exemption constitutional rather than legislative.

MR. SINKLER: Yes, I do. Yes, I do want to make it constitutional. I'm thinking about these waterwork systems.



MR. WORKMAN: I'm thinking about the legislators who are going to be besieged constantly with all these charitable and fraternal organizations who kept staying exempted. I think we're going to have a roll back by court order on some of these things perhaps stemming out of the Richland County investigation now. Once that's done, the legislature can say, "no, we can't do that".

MR. STOUDEMIRE: I take it then, so I can try to work on this thing that you also buy this idea that an organization who might do 2% charity is not charitable and really should not be exempt. That an organization like this phrase in here, "---property of associations and societies although connected with charitable objects, shall not be exempt---" unless thier major purpose is charitable. I assume that you want to keep that thought.

MR. SINKLER: Well, let's do this. Here's a way you can handle that, Bill. I hadn't thought of it before. What you could provide is that certain things, the public things, the county, the township, municipal and soforth should be exempt and that the legislature may provide or under a system by which they would have to make application for tax exemption and then--which would presumably have a built-in provision . . . . . from the administrative level, to determine the taxability. In other words if the Elks Club in Charleston wanted to get a tax exemption, they would have to apply to the Tax Commission. The Tax Commission would make a finding and the County Treasurer or an interested taxpayer wanted to carry the thing on through the court room.

MR. HARVEY: That's legislative and not constitutional

MR. SINKLER: No. You're not going to be able to divorce everything legislative from this document. That's impossible. We wouldn't enjoy it if we did.

MR. STOUDEMIRE: Looks like we ought to go back and use the term "curtilage". That last "Provided" you see. Just substitute that work, we could get rid of all that.

MR. WALSH: This is a serious municipal problem where now so much of your income comes from property tax, but the legislature exempts all this valuable property from taxation and it increases the property tax on everybody.

MR. STOUDEMIRE: It's quite so. You see, in the nature of water pollution, all these type things. You take downtown Columbia, you've got block after block after block where you've got to put in all these pipes where churches now own a whole square block.

MR. HARVEY: Of course this is not the fault of the Constitution. It couldn't be any clearer with "---property of associations and societies although connected with charitable objects, shall not be exempt---".

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MR. McLENDON: Shall we accept it then?

MR. SINKLER: Take out the "not for revenue".

MR. STOUDEMIRE: You want to go on the basis that that which is really used for public purpose shall be exempt. That which is really used for educational, religious and true charity shall be, but we want---

MR. HARVEY: "Associationa and societies---", that's pretty well put.

MR. STOUDEMIRE: You still want to retain the idea if it is not major charitable, it shall not be.

MR. SINKLER: Play with the idea---see if you can conceive of a simple provision that would be automatic in the case of a public agency, but that would require application on the part of the private charity seeking the exemption. In other words, expose them to daylight.

MR. WORKMAN: It could be done by requiring---in other words we restrict it to those certified by the State Tax Commission as being charitable.

MR. SINKLER: That's right. That's right. And then, you could in your special act provision knock out all of these special exemptions. Do that in your special act provision.

MR. McLENDON: Too cumbersome. Better leave it like it is.

MR. SINKLER: Well, let's cover it this way. Let's cover it in a special act situation. As long as the General Assembly does it on a statewide basis.

MR. WORKMAN: As I say, I think the courts are going to correct this thing.

MR. SINKLER: I was trying to make them automatically get themselves in court if there was any question about it. Still think that might not be a bad idea.

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Break

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MR. McLENDON: Page 8, Section 5.

MR. STOUDEMIRE: This is party taxation which leads into that debt section which comes up in the next paper. "---may be vested with power to assess and collect taxes ---" and so on. Now, you've got

a lot of junk in here, I think. "---whether now or hereafter incorporated, or organized under the laws of this State or of the United States, shall be listed at their true value in money, and taxed for municipal purposes---". What are we talking about.

MR. HARVEY: It is interesting here where they use the word "uniform" and leave out the word, "equal". "---such taxes to be uniform", you don't think there's any distinction.

MR. STOUDEMIRE: "All shares of stockholders in any bank---". They're not taxed now, are they?

MR. HARVEY: I don't think that needs to be in there.

MR. WORKMAN: Did you inquire of the Tax Commission---this is the thing that's so technical. We might be doing some damage unless we are assured that it will be immediately transferred into the statute. I'm inclined to think that this is statutory rather than constitutional.

MR. HARVEY: I don't think anybody taxes shares of stock.

MR. STOUDEMIRE: No, you've got the special bank tax to take care of the---. You've got that special bank tax, you know, supposed to replace the taxation of all bank papers and so on---mortgages and that type thing because you get--each town gets a statement from the bank at the end---

MR. McLENDON: We get them---pro-rata share back that isn't taxed.

MR. STOUDEMIRE: You want me to inquire---I think Joe Allen would be the best one, perhaps, the tax attorney---to inquire beginning there, "All shares of stockholders in any bank---"---to inquire whether deletion of that all the way down would do any harm.

MR. WORKMAN: If that whole general section there---

MR. HARVEY: Shall apply to stockholders of all corporations other than banking institutions.

MR. STOUDEMIRE: I don't think this thing is applied. The first part, "The corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and---". We can't do that until we do the property tax thing, can we, really?

MR. McLENDON: That's right.

MR. STOUDEMIRE: O. K., I'll inquire then from the Tax Commission on all this last section.

MR. WORKMAN: Stockholders and bank and other corporations.

MR. McLENDON: So, you're going to consider it when we take up the other matters.

MR. STOUDEMIRE: Now, gentlemen, we are down to Section 6. "---for which purposes tax levied or bonds issued--the credit of the State shall not be---". Here, we're back to that part we left off on education"---pledged or loaned for the benefit of any individual, company, association or corporation; and the State shall not become a joint owner of or stockholder in any company, association or corporation. ---shall not have power to authorize any county---". Here we are with this old public purpose clause.

MR. HARVEY: Ordinary county purposes.

MR. STOUDEMIRE: I'm going to inquire from the Tax Commission if this now has any value beginning here. And all this, of course, is related to what we decide on property tax.

MR. WORKMAN: Bob, isn't one of the sticklers here is that "ordinary county purposes". Should we grapple with that?

MR. STOUDEMIRE: It seems to me that that ought to go.

MR. WALSH: Aren't we going to have to give consideration, then to the other side of the coin. If you are going to open the door to the county to assume all these---any public purpose---what effect is that going to have on the city that now has that power, already has it? We've got to look at both sides of that coin together. I think you're right. The county now, either as a county or some form of government, has to meet these---there are pressing problems that are simply being pushed under the rug in a lot of areas.

MR. SINKLER: Well, I think you handle that to some degree with your debt section where you authorize them to undertake certain things which will require local assessment. The main effect Section 6 has had on our State as I can recall it, it prohibited airports, county airports. It prohibited a Charleston citizen from getting subsidized for his sewers in World War II.

MR. HARVEY: Fire fighting.

MR. SINKLER: It would prohibit fire fighting.

Mr. McLENDON: That textile thing in Greenville-Spartanburg. Didn't it get into the courts?

MR. SINKLER: I think you want to enlarge it, but I think you don't want to turn---you see, the counties are the wealthy agencies in South Carolina. Cities are dirt poor. Counties, by and large, can



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do so many more things than cities can do.

MR. WALSH: One of the big reasons is that the State deals with the county. They say Richland County is entitled to 1¢ tax. They don't have to give the city anything even though the city is three fourths of it.

MR. SINKLER: I think you are going to have a merger, either in Richland or Columbia or Charleston.

MR. STOUDEMIRE: Gentlemen, I think here we have got two questions. The first part of that down to the words, "General Assembly". Whether we want to retain in the Constitution the credit of the State---I really ought to say sub-divisions, too.

MR. SINKLER: The court said that, you know.

MR. STOUDEMIRE: "---shall not be pledged or loaned for the benefit" and so on. Now, do we want to retain such a statement?

MR. SINKLER: Yes, I think we do want it. We got around it in the revenue bond act.

MR. WALSH: How did you do that?

MR. SINKLER: It really wasn't the county pledging anything anyway. It was the same thing as Park against Greenwood County. I think you want to keep it. I don't think it's in the proper place, though. It ought to be by itself.

MR. STOUDEMIRE: That's what I'm thinking now, too. O.K., down to 3½ sentences, "association or corporation" period.

MR. SINKLER: You might put in there, "or any of its political units". Before doing it, read the Elliott against ---we covered that in---

MR. HARVEY: McNair.

MR. SINKLER: Elliott against McNair, that's right. The court held that the word, "State" there included political units. Read it and see whether you want to enlarge it, Bob.

MR. STOUDEMIRE: The only thing I was thinking about enlarging it here, this automatically shuts up some town from even thinking about it. They may try to find a way to skin it.

MR. SINKLER: Well, read the case and see. Of course, that really wasn't contested. It should have been in there originally. The court decree was adopted. Of course it means the credit of this State and its political units.

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TO: Faculty Welfare Committee  
SUBJECT: Recommendations to Senate

Attached please find the motions as recorded by Reid  
Montgomery.

Please contact me if you have suggested changes in  
wordings.

P. Lovingood

Stanley D. McIntyre  
Dean of Faculty  
Clark Hall

253  
266

Mr. Drueel - No  
Seg - Monday  
Lam - Monday  
Cairle - or 28 Feb 29  
Wigatt - 28 Feb 29  
Hamm - ?

Thursday 29 Feb - 10-12  
Leach

Wed. 28 Feb =

April 2 - Green  
2:30

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MR. STOUDEMIRE: Now, then, gentlemen, the second half. To me, that is legislative material. I wholeheartedly agree with Emmet's position of towns getting on the short end, but it seems to me that the purpose for which a county or township or any other district that we create in the future, to levy taxes is a matter of legislative concern, isn't it?

MR. WALSH: It is, but you also cannot overlook the past history of this State by simply saying, "well, we're going to open the door wide for any purpose, legitimate public concern, is a county purpose. I could result in some right---

MR. SINKLER: I don't object to it if you tie it down in the debt situation by providing that if a county goes into sewer systems or any special utility service that they impose a tax on the beneficiary. I do think that the court was a 100% right in not letting Charleston County not give that citizen a sewer system.

MR. STOUDEMIRE: You see, on here---I'm thinking now in terms of this idea applied to all local government now and not just county and I don't know how to word. You see that a unit of government can collect taxes where it has given the service---no, that isn't going to do because the sheriff, theoretically, is giving service to the city, but he isn't, is he? You'd have a hard time showing that the sheriff didn't give some service to the City of Columbia.

MR. WORKMAN: This think takes the general reserve powers of the State and shares it to a given degree with other political units, but the question is how much of the limitation should surround it. I think it may well be that there should be some limitations in there that keeps towns from trying things that they manifestly shouldn't be trying on the face of it.

MR. McLENDON: Well, there is a great hue and cry for ambulance services for a public purpose. Some counties say it is and are appropriating money for it. Other counties say it isn't.

MR. STOUDEMIRE: For instance, some counties have a rural fire service, I think, and I'm not sure at all that it is within the meaning of this.

MR. SINKLER: Oh, I've refused to approve bonds for fire.

MR. McLENDON: We make appropriations. We give them money.

MR. STOUDEMIRE: Yes, I know, but you ought to be able to provide for a rural fire service in your county which is legal.

MR. SINKLER: Which would impose some charge on those who benefit.

MR. WALSH: But, Bob, should they be permitted to buy fire service when half of the county already has a better fire service than they would ever provide?

MR. STOUDEMIRE: No.

MR. SINLER: And should a county-wide tax be imposed on the the City of Spartanburg to provide fire service over near Greer, some place like that.

MR. WORKMAN: What is then your rationale on saying "no" on the fire thing.

MR. SINKLER: Well, I say that's not an ordinary county purpose.

MR. WORKMAN: What would you say to it being a public purpose?

MR. SINKLER: I'd say it was a public purpose.

MISS LEVERETTE: I know the court held in an Anderson County case--- the County wanted to tap on to a line and they wouldn't build the extension.

MR. STOUDEMIRE: I think we all agree, we're not really worried about what a county does so long as a certain class of taxpayers don't get rooked for doing it.

MR. SINKLER: Well, actually they get rooked now because you've got no system in South Carolina. They want to put a tax on and spend the money nobody questions it. It is only when you get into the question of borrowing money that the questions come up. You've got some system---probably a very good one in Beaufort County, some sort of rural fire situation.

MR. HARVEY: Turned it down.

MR. McLENDON: Our's is voluntary thing that people pay to participate. We've got two, one on each side of the county and the delegation just appropriates out of the county appropriation bill.

MR. WALSH: The way we do it in Spartanburg, they'll organize a special fire district, provided however they shall never have the power to levy more than three mills taxes.

MR. STOUDEMIRE: Was not this the basis that McLeod ruled that Aiken County could not participate with Augusta, Georgia because it involved planning which was not a county purpose in 1895.

MR. WORKMAN: I didn't read the decision.

MR. STOUDEMIRE: I think it's the old ordinary public purpose thing.

MR. HARVEY: When we discussed this last year, didn't we say that the idea was to liberalize this a little bit.



MR. SINKLER: We definitely want to liberalize it. I think we turned it loose here pretty broadly, but we tied it down on the power of a county or township to issue bonds or levy taxes for some of these purposes. We assume that the county might have to be the agency, but we restricted the county in a different section.

MR. WALSH: Is it possible to put something in there that where a service or where a tax is levied for the purpose of providing a service, it cannot be imposed on a people who can't reasonably receive it.

MR. STOUDEMIRE: Let me ask you gentlemen several things first. Someone told me the other day and you attorneys can speak to this, I think, that in South Carolina, historically, it has been fairly easy for a taxpayer to get a suit.

MR. McLENDON: He can get into court.

MR. STOUDEMIRE: If that be true---here's what I'm leading into. When you get over to local government we have to make some statement about the General Assembly under general law or some such thing, shall provide for these local governments right to raise revenue. Could we work out some type of gimmick there and add another clause whereby they must, in doing this, they must provide that services which benefit a particular group of people, particularly must pay for that service. See what I'm getting at? Now, the two linked together, if you can get a taxpayers suit, if you've got some type of constitutional provision of that nature then when the rural fire department is being paid out of county-wide taxes, then I could come with my suit.

MR. WALSH: That's the sort of thing you need now and that will have this other beneficial effect, I think that since they're going to have to rely on an area they'll quit having these little ones. Districts so small that economically they can't provide a fire service. It will make them have sufficient size areas that I think it might be beneficial.

MR. STOUDEMIRE: This is really a problem associated with the right of local government to raise taxes.

MR. WORKMAN: You suggested, Bob, the possibility of leaving this thing out altogether didn't you and leaving it up to the General Assembly?

MR. McLENDON: Huger's idea is that it be tied in with some of the---

MR. STOUDEMIRE: Huger, I think is saying when you issue a bond, it be tied in.

MR. SINKLER: No. I'm saying if you levy a tax tie it in.

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MR. WALSH: If we can leave this out and in another section---

MR. SINKLER: Spell out the powers---

MR. WALSH: Spell it out on taxes and bonds, that might be the answer.

MR. STOUDEMIRE: We can leave out on local government finance then.

MR. McLENDON: That is the last sentence, beginning "the General Assembly".

MR. STOUDEMIRE: On local government finance try to fix payment on part of those using service.

MR. SINKLER: Now you've got to define your service. You're talking about utility service, you're not talking about health, that sort of thing.

MR. STOUDEMIRE: That's going to be a hard thing to do.

MR. SINKLER: It will require a great deal of thought and nobody's going to be perfect on it.

MR. WORKMAN: But it's got to be broad enough to take in things which are becoming public purposes or public services now as against 1895 and 1995 as against now. I don't know whether we can do it because we've got pollution, garbage collection which Richland County and the City of Columbia are now taking over as a governmental function.

MR. STOUDEMIRE: Bamberg County ought to be able to raise taxes for an airport if they want an airport.

MISS LEVERETTE: Aren't you going to have a situation as we begin to get into the local government proposition which all the counties are going toward, there's going to have to be something fixed, more so now than previously, when we are getting into a type of local government.

MR. WORKMAN: There has got to be some uniformity prescribed that will allow all local governments to operate within this framework.

MR. SINKLER: What we're going to have to have, frankly, in my opinion, is some state control over local budgets. We're going to have to require these governments that spring up with plenary powers to balance their budgets because I've run into one or two situations where they have not done it and we're all so small a State that one county's credit gets bad it's going to hurt everybody. It's going to cost us all fortunes and so we're going to have to in your local government section, it seems to me, provide these things, but provide that---the real way to do it is to provide that no State aid shall be

given to anybody until it is established that their budget is balanced. That's really the way to do it, the schools and towns, they're all the beneficiaries.

MR. WORKMAN: We then thinking to transfer this to local government and make it inclusive of the idea of beneficiaries will bear the brunt of the burden.

MR. McLENDON: Section 7.

MR. STOUDEMIRE: "No scrip, certificate or other evidence of State indebtedness shall be issued except for the redemption of stock, bonds or other evidences of indebtedness previously issued, or for such debts as are expressly authorized in this Constitution."

MR. SINKLER: We did do that in the thirties. We did that in the--- I think the '32 legislature did that.

MR. STOUDEMIRE: Won't this be combined with debt?

MR. SINKLER: Yes. The history of that---that was not in the Constitution of 1868 as originally written is my recollection. That was put in by the reform legislature after the Tillman-Hayes election and what they'd been doing was issuing bonds and scrip and everything under the sun and this was to kind of close the door after the horse left. I don't know that there is any necessity of that in the Constitution. Taylor Stukes once asked me the significance---it seems to me I covered that in some sort of thing I wrote, but I don't think there's any need for it at all.

MR. McLENDON: The thought is to delete it. Anyone have any objection to deleting it? If not, we will understand that we have taken it out. Section 8.

MR. SINKLER: You might to think of a prohibition against permanent debt which used to be the stock---we've still got some stock outstanding. Stock is nothing but a bond without a maturity date. Now, there's a very little bit of it outstanding. I don't know where it is. It certainly wasn't within a few years. We will have to ask Grady Patterson about that. Stock---the term "stock" there was simply a bond without a redemption date.

MISS LEVERETTE: How far would that go back?

MR. SINKLER: Stock was the classic term---I don't suppose the word "bond" came into the picture as far as nomenclature until well after the Civil War.

MR. STOUDEMIRE: Section 8 on the next page is not really being conformed with now. "Shall be published with the laws of each regular session". Now the State Treasurer does publish an annual report.

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Has his own annual report. So does the Budget and Control, but it is not published with the laws.

MR. WORKMAN: The Budget Board published it, too, but not with the laws. I've got a question down there, is it done? I don't recall it ever having been done with the Acts and Joint Resolutions.

MR. HARVEY: Why don't we just say, "shall be published annually in such manner as may be law be directed".

MR. STOUDEMIRE: "An accurate statement of the receipts and expenditures of the public money shall be published annually in such manner as may be law be directed".

MR. WALSH: Does that include the Highway Department? Have they ever published it?

MR. McLENDON: The Ways and Means can get it.

MR. STOUDEMIRE: I haven't seen a Highway Department report.

MR. WORKMAN: They make annual reports, but they don't have the information in there.

MR. McLENDON: Shall we move on then to Section 9.

MR. STOUDEMIRE: "Money shall be drawn from the Treasury only in pursuance of appropriations made by law."

MR. WORKMAN: We had something on that order before, but what we had before, "No tax could be levied"---

MR. HARVEY: What we had before was out of the Bill of Rights.

MR. WORKMAN: Here it is on page 7, Bob. "No tax shall be levied except in pursuance of a law which shall distinctly state the object". This was withdrawal of money from the Treasury which is the other end of the tax.

MR. STOUDEMIRE: Shouldn't they be combined if we leave them. "And no money shall be drawn---and money shall be drawn from the Treasury only pursuant---"

MR. SINKLER: No. One is talking about State and the other is talking about public agencies generally. You would have to revise 9 here to make it a little broader.

MR. STOUDEMIRE: There's no objection to doing it, though. I suppose we need it in the Constitution.

MR. SINKLER: I think something is needed.



MR. WALSH: I think we ought to have it.

MR. WORKMAN: It requires that there be some justification for any withdrawal of funds.

MR. SINKLER: Lays the basis for an accounting, too.

MR. STOUDEMIRE: Well, let's approve it then. All of this stuff is going to have to be rearranged when we get through anyhow.

MR. McLENDON: O. K., Section 10.

MR. STOUDEMIRE: Dr. Larson got you some little history on this fiscal year. I think he concludes that is a matter for the General Assembly to decide and not constitutional which I agree with.

MR. SINKLER: Just say the fiscal year shall commence on such occasion.

MR. WORKMAN: Don't say anything about it.

MR. STOUDEMIRE: I don't think it is a constitutional question.

MR. WORKMAN: I move that be taken out.

MR. WALSH: Second.

MR. McLENDON: Any objection to that.

MR. SINKLER: Wait a minute now. You've left out the real significance of the thought here. Fiscal year is immaterial. The real part of this 10, "---the General Assembly---authorized and empowered to make appropriations for governmental purposes---". This ties in with this balanced budget and no continuing appropriations. In other words, it has been construed in---at least Cox against Bates---this came up apropos of whether the legislature can simply haul off and appropriate, say for Clemson indefinitely so that in order for Clemson to be cut, the General Assembly would have to get a measure through two Houses. The idea here is that you'd limit the power of the General Assembly to appropriate beyond the fiscal year. Now, the court has had to sort of abort that once or twice in some of these continuing appropriations.

MR. STOUDEMIRE: Huger, isn't this talking about the first year after these things changed, the way I read it.

MR. SINKLER: That's what it is talking about, but that, tied in with---when they changed the fiscal year, they had to give them the power to appropriate for eighteen months---where is the other section providing the balanced budget---it might be that whole thing could be taken up---you don't want to lose that thought that the General Assembly should not have the power to make continuing appropriations.

2 of X is the---

MR. HARVEY: I'm like Bob though. I read this as only applying to one term.

MR. STOUDEMIRE: Applies to that first year, I think. You see, you're covering Section 2 with the phrase, "---the estimated expenses of the State for each year---".

MR. HARVEY: It's for the first session after such change.

MR. WALSH: I'll say this, we certainly don't want a situation arise where you could say, appropriate for Clemson and just go on and on and on. Just using that as an example. If there is any chance of that, we can put it in.

MR. WORKMAN: What about this. Does not this provision on page 6, "The General Assembly shall provide for an annual tax sufficient to defray the estimated expenses of the State for each year, and whenever it shall happen---"brings in the deficiency bill---if we are going to limit the length of time for which appropriations could be made, I think it ought to be there.

MR. SINKLER: Yes. I agree. It should be there. I think this can come out.

MR. WALSH: What section is that, Bill?

MR. WORKMAN: Section 2.

MR. HARVEY: It's right up here in 9. "Money shall be drawn from the Treasury only in pursuance of appropriations---". Such appropriations shall only be for one year's time.

MR. STOUDEMIRE: Now you carry appropriations over and so on. You're getting into dangerous hot water now when you match your federal funds and so on. If you start tying up---

MR. WALSH: You don't carry any appropriations forward, do you?

MR. STOUDEMIRE: Yes, you do. You do it by law.

MR. HARVEY: Capital improvements.

MR. STOUDEMIRE: I think you'd better leave things like you've got it. I don't think these rights have been abused.

MR. SINKLER: Well, you have the reserve fund which involved some distribution to the counties. You have got continuing appropriations because the Highway Department is a continuing appropriation. The court has had to get around that problem, but they knocked out the

State warehouse many many years ago after the General Assembly tried to appropriate for two years for the State warehouse.

MR. McLENDON: We often run into that, Brantley with the State appropriations bill. Somebody will raise the point in reference to it and the statement is always made, "We can't do anything with that. That's a continuing, permanent situation."

MR. SINKLER: Which, of course, the whole object of these framers were that you could have no continuing appropriation, but the court has done a little judicial fiat with that thought. I'm trying to think whether Section 10 of X---this is a Neville Bennett amendment, this particular one here. I'm trying to think whether it wasn't written a little bit differently at one time in its original version.

MR. WALSH: Huger, hasn't the South Carolina Supreme Court been pretty capable when it comes to amending the Constitution.

MR. SINKLER: Very, very adept at it.

MR. McLENDON: Shall we make some disposition of 10?

MR. SINKLER: I think what we ought to do---I think we ought to give a little bit more thought to---I don't think 10 is significant. I think 10 is now written to come out, but I think we ought to--- Let's go back to 2 and leave open the question of continuing appropriation and what, if any, limits we want to put on.

MR. McLENDON: Bob, have you got that in your notes?

MR. SINKLER: Now, that's going to take some study and frankly, I think I ought to at least volunteer to read Cox against Bates and some of these other cases or at least get my capable partner---

MR. STOUDEMIRE: Gentlemen, I'm not worried about continuing appropriations at all because you have enough trouble meeting the budgets as they are and I don't think there'll be too much continued.

MR. McLENDON: Well, shall we go to Section 11.

MR. STOUDEMIRE: Our debt comes up under debt---we put that section there, just let it continue---

MR. McLENDON: Take it up later.

MR. STOUDEMIRE: Yes. It comes under the debt section, really and actually the safe-keeping of funds is the next pertinent section.

MR. WORKMAN: Is it our intention to merge with two sections, one on taxation and one on debt.

MR. HARVEY: Finance?

MR. STOUDEMIRE: This is open. I think way back when we were discussing that debt thing before that our agreement at that time was that we would bring all debt together under something we're going to call "debt", whether it be part of finance and taxation or whether it be a separate article, but this would be considered when debt's considered.

MR. WORKMAN: Right. With the ultimate combination---

MR. STOUDEMIRE: I don't think it would be---dependent a little bit in part on how long the sections really are when we get through with taxation and the whole thing.

MR. WALSH: How in the heck the Supreme Court of South Carolina ever got around Section 11 is a marvel to me.

MR. STOUDEMIRE: I don't agree to it, either.

MISS LEVERETTE: I get the feeling that if a lot of this were abided by, there wouldn't be as much revision necessary.

MR. SINKLER: Well, you've got to look at the background of this thing. The time when it was written and the condition of South Carolina in 1929 when we were in the mud literally. You go back and read a case from the 1850's when a taxpayer was criticizing Charleston for investing in railroad bonds, he said, "What is a corporation except something for the convenience of the citizens. What powers have they got". Any that the legislature wants to give them.

MR. STOUDEMIRE: Huger, I told my students last week when we were talking about the expansion of governmental authority, "You must keep in mind these basic expansions are made in time of great emergency. When you're hungry you don't much care whether its federal food or state food." Like the depression. First thing you know you've expanded and you don't go back to where you were.

MR. WALSH: You're right. The economic system is that way, too.

MR. STOUDEMIRE: "Suitable laws shall be passed by the General Assembly for the safe-keeping, transfer and disbursement of all funds" (except municipal)---"all officers and other persons charged with the same shall keep an accurate entry of each sum received---. It shall be the duty of the General Assembly to pass laws making embezzlement---. Provided, however, the General Assembly, by a two-thirds vote, may remove the disability upon payment in full of the principle and interest of the sum---." Well, I'll be darn, I never read that before. Dr. Larson thinks this is statutory material and probably should be left out.

MR. McLENDON: Concurrence or---Move on to 13.



MR. STOUDEMIRE: I think that this may have to wait until we get a property tax thing, but I do think, in here, is an idea which might help---there's a little bit of agreement now---I assume that we are thinking that there would be a common assessment. That textile plants would be assess alike whether they are in Charleston or whether they be in Spartanburg.

MR. SINKLER: No, not at all. What this is saying is that there shall not be municipal assessments---used to have them in South Carolina.

MR. WALSH: School district assessments.

MR. SINKLER: Used to have all sorts of assessment boards. You had a city board, a county board and the county had one assessment, the city had another and this came in---this didn't go back to '68. This came in in 1895 to eliminate that. There's some case involving bonds of Darlington which the court held was justified because of the fact that the city assessment or whatever they held---didn't make any difference. At any rate, there was a city assessment and a county assessment. This is the prohibition against duplication of assessments for taxation and this is the Section which we might really take and work out with this business of statewide assessment.

MR. WALSH: Mr. Chairman, in that connection it just occurs to me--- I think this was Governmental Relations Committee---

MR. WORKMAN: Intergovernmental Relations Committee.

MR. WALSH: Intergovernmental Relations Committee, they've made a most comprehensive study of the property tax and the best way to handle it that I've every seen. I've got a copy. Now, we might get some help out of that.

MR. WORKMAN: I'll bring it tomorrow.

MR. HARVEY: Don't leave 13 A out.

MR. WORKMAN: What are we going to do? Accept 13 as is with the likelihood of trying to enlarge it to encompass uniform assessments.

MR. SINKLER: Use that as the vehicle from which we expand if we agree on the idea of some central---by "central" I mean statewide system of---

MR. WORKMAN: ---equalization of assessment.

MR. SINKLER: ---equalization of assessment. Use this Section as the basis for---

MR. STOUDEMIRE: Gentlemen, phraseology still worries me. "---made for State taxes" you see, when your State is not using a property tax. We may have to work around that. I think we all agree it's

what we want, and the importance.

MR. WORKMAN: You can just stop that, Bob. You can say, "---and State, county, township, school, municipal and all other taxes shall be levied on the same assessment" period.

MR. STOUDEMIRE: Established by the State.

MR. WORKMAN: No, you've already got the State.

MR. SINKLER: We might want to use this as the vehicle for the whole.

MR. WALSH: Does this have any effect on the assessment of the butting landowner?

MR. SINKLER: Assessments of abutting landowners goes back to another--- This guy Mauldin in Greenville was a very litigious individual. You'll find three Mauldin cases. I think a lot of these things were test suits, but looking at them in retrospect you'd classify him as a litigious gentleman. Mauldin had a house on Main Street and about the time Greenville was trying to persuade---unsuccessful in persuading Duke's predecessors to set up an electric system---they also embarked upon the very nice idea of having a new sidewalk. Well, Mauldin had already paid for his sidewalk and he said, "You can't assess me. I've got a big lot here. You can't assess me. That's not in proportion to the value of my property". So our court held in this Mauldin case that Mauldin was correct. His property is worth something. His neighbor is worth something. Improvements have got to be paid on the same basis and the judge goes on says, "We know that this type of assessment is permitted in many states, but it is foreign to our thinking and inequitable anyway. So, they just said no so as a consequence---nothing in South Carolina---you couldn't pave a street in South Carolina without these special constitutional amendments. You know when I first started in this field many years ago, we used to get one of these paving assessment bond issues probably once a month for some small amount of money. I'd have to get maps. I'd have to get consents and had to have the original documents. It was a horrible job. When I first got into it, that was my job. Of course, you had to check your constitution. Finally you'll get over here somewhere and you'll find a general one for them.

MR. STOUDEMIRE: Huger, Mr. Allen and I had quite a discussion on this yesterday afternoon and he more or less takes the position now that later cases have reversed Mauldin.

MR. SINKLER: No entirely.

MR. STOUDEMIRE: That the courts now rule that these special assessments are not part of the uniform thing and so on and that we can get around all this stuff.

MR. SINKLER: I want to take them all out. 100%. I don't know that we may not have to have a little bit of language there. We might almost cover it by a committee opinion. The first case we had was out here in Richland County. I think it was this Jackson Gills Creek test suit and the court said it didn't have to overrule Mauldin so it wouldn't do it. Then there's another one. There's Staymire against City of Charleston which---in Staymire the City was going to build a waterworks system and they were going to assess each property owner by the amount of pipe in front of his street. So you've really got Staymire and Mauldin to handle in this thing, but I think you can cover that when you get to local government by making clear that they can do this. I think for the purposes here that you simply wipe out all of these 13A and everything like that.

MR. STOUDEMIRE: We have got them under debt.

MR. SINKLER: Should be under that anyway.

MR. McLENDON: Where does that put us?

MR. STOUDEMIRE: That gets you down here until---one or two other little things that you might want to consider. Does anybody use special assessments any more?

MR. SINKLER: Well, the Highway Department has taken it over as you say. We've got a special assessment for sewers and waters and all that sort of stuff.

MR. WALSH: Yes, sir.

MR. STOUDEMIRE: On the abutting owner. I didn't know whether it was completely obsolete or not.

MR. HARVEY: Public service districts use it, too.

MR. SINKLER: Well, we're going to use it in South Carolina for sewer.

MR. McLENDON: All right, Bob. Let's move forward.

MR. STOUDEMIRE: All right. Here's a section here on federal aid.

MR. WORKMAN: Where are we now, Bob? On what page?

MR. STOUDEMIRE: Bottom of page 13. We just agreed in theory to Section 13.

MR. HARVEY: And to eliminate all the others.

MR. STOUDEMIRE: Yes. They are transferred to debt. } "The Model Constitution prohibited the general practice of earmarking revenues."

MR. WALSH: I like that thing about prohibiting earmarking revenues.

MR. STOUDEMIRE: All right and then there is another section here. A lot of state constitutions do deal with the budgetary power, most of which place it squarely in the hands of the governor which may or may not be according to your thinking. In any case a great many constitutions, including the Model, do make state budgeting a constitutional question.

MR. HARVEY: Who would you say it rests with now?

MR. STOUDEMIRE: With the Board.

MR. McLENDON: Budget and Control Board.

MR. STOUDEMIRE: I have always wanted to make---there's no point in making it if all ex-governors and all ex-members---would tell you the truth and that really and truly, who is the power within the Board? In other words, this budget coming up now, is it McNair's budget or is it a combination of thought or does Senator Brown dominate the thinking---in other words---

MR. SINKLER: Or do the State agencies run wild? That's another thought.

MR. HARVEY: They make the budgets in effect.

MR. STOUDEMIRE: The question is according to our study, do we need a constitutional provision on earmarking?

MR. SINKLER: Earmarking.

MR. WALSH: I move we have a provision against earmarking.

MR. WORKMAN: What form would it take? What shape would it take? We have already prescribed that all taxes shall be levied only for the purpose prescribed.

MR. McLENDON: So it can be earmarked under that.

MR. WORKMAN: That's an earmarking in itself.

MR. WALSH: Maybe we want to reconsider that motion.

MR. SINKLER: Well, now, wait a minute. Do you want to abolish the Highway Department? I was just asking.

MR. STOUDEMIRE: Well, I think here---since we have earmarked for so long, you would have to recognize that your bonded obligations would have to be protected so however you word it the proviso would have to be---something with the idea, other than meeting your bonded



obligation---

MR. WALSH: That would be down at the end when you put in a catch-all provision to take care of what happened in the past and how it is in the future. You wouldn't have to necessarily---

MR. STOUDEMIRE: I believe in the State of South Carolina now, by and large, the gasoline tax is the only one that's really not a moot question. Beer and wine and so on, earmarked to education and also sales tax for education consumed more than beer and wine and liquor and also more than sales tax. So, while you've got something earmarked---earmarking of your gasoline tax is significant. I mean it is a true earmarker, whether it be wise or unwise.

MISS LEVERETTE: Wouldn't you have to put a provision in there about the requirements under federal funds?

MR. STOUDEMIRE: Yes.

MR. WORKMAN: Now, there are other funds that are earmarked. I'm not sure what category they would fall in. The Public Service Commission, the banks and all the levies which these taxes ---

MR. SINKLER: Fertilizer tax goes to Clemson.

MR. McLENDON: So there's a good deal of earmarking.

MR. WORKMAN: There seems to be increasing sentiment within the legislature, or used to be, that when something would come up and they'd say well how are we going to accomplish to that and they'd say, well, we'll put this tax and earmark it to accomplish its purpose. That's becoming less highly regarded now.

MR. WALSH: I think it is a bad fiscal policy. It's like an individual saying he's going to earmark everything he gets out of this farm for this child and then I'm going to earmark everything I get from this other farm for this child and one farm has a drought.

MR. McLENDON: Well, aren't we too deep in it now that you couldn't get away from it. Didn't they earmark the bottlers' tax for schools?

MR. STOUDEMIRE: This may be reason to get back into it.

MR. WALSH: From here on out---just move from here on out. We couldn't go behind.

MR. STOUDEMIRE: William, I think it may be semantics, but the way we changed the section a while ago, I don't think you---we changed it from "object" to "public purpose". I'd interpret that as not necessarily earmarking it.

MR. WORKMAN: No. It opened it up so that it would not be necessarily tying it to a specific---

MR. SINKLER: Well, I think your only significant thing here because I don't think the other taxes are really significant because as Bob says the beneficiaries usually get that, plus. I think the disadvantage in earmarking is you don't know what's happening to your money. When you earmark you lose sight of what is happening to your money, but your real thrust here is, do you do something with the Highway Department. In other words, do you make it possible for another Governor Maybank to come along and try to get some of the money away from the Highway Department.

MR. STOUDEMIRE: Well, I do think this. You do give an earmarked department an unfair advantage to the other departments. Certainly the Highway Department's job is easier. It can count on six or whatever the number of pennies are pledged---they know they're going to have this next year and they can plan four, five or six years where other departments really can't. Also, even though it be--- I don't quite think this is constitutional, but maybe, perhaps, legislative---but it seems to me that all state agencies should go through the same budgetary procedures and accounting regardless of whether they're earmarked or not earmarked.

MR. WALSH: And justify their need for so much money for a particular purpose.

MR. STOUDEMIRE: Gentlemen, this goes further than money. You see it goes to the fact that the Highway Department has its special fund, goes into personnel regulations. Hours of week worked.

MR. WALSH: Goes into the efficiency of the organization---

MR. SINKLER: Goes into the log rolling problem, too. It narrows the log rolling problem to one of the commissioners and avoids the log rolling problem on a statewide basis.

MR. WORKMAN: Well, one of the achievements which was made back immediately after the war, in '46 and '47 when Charlie Plowden was chairman of the Ways and Means, was to break up what heretofore had been the system of all revenues which originated within a department or agency accrue to the credit of that department or agency and then they appropriated either a balance or the legislature tried to recover some. In that period of time they then put everything in the common pot so that all these things went in---what the penitentiary earned, what the forestry commission earned---all went into the pot and then was appropriated back out as need demanded.

MR. SINKLER: I'll tell you a little wrinkle on this that you probably wouldn't have thought of. Money has become so valuable that short term investments produce a good deal of money and the Highway Department complained about the fact that their money is being invested by the State Treasury and the income goes to the general pot and not back to the Highway Department.

MR. McLENDON: Well, where are we with out decision process?

MR. HARVEY: Budget, then. That's where---

MR. McLENDON: We never decided what we would do with earmarking, did we?

MR. WORKMAN: I would say that if Emmet can suggest a specific approach that we give it some consideration. Right now, Emmet, I can't think---

MR. STOUDEMIRE: Well, I think the way your laws stand now and if I read the powers that be all the way---if you're going to stop earmarking, I think the only way you're going to do it is by putting in a direct Constitutional provision which prohibits. In effect what you're saying is that the 7¢ gasoline tax, except what's needed for borrowing, goes into the South Carolina General Treasury and is then appropriated back out like every other State agency gets its appropriations. This is what, in effect, you're saying is it not. Stop earmarking. Now, this is so imbedded that to prevent this, to stop it, I think you would have to say, "Thou shalt not earmark".

MR. SINKLER: You've also got to get into that question of appropriating beyond one year. This puts---on the other side of the picture this prevents the Highway Department from orderly planning.

MR. WORKMAN: The essence of earmarking, whether it be called that or whether it be looked upon with favor or not, is implicit in taxation because if we say that it is necessary to double the size of a SLED force, to add umpteen men at a cost of 100 thousand dollars, the question comes up, how we going to get the 100 thousand dollars---somebody proposes an additional tax---the whole purpose of it is raising that tax to meet this purpose which is earmarking in principle whether we spell it out or not.

MR. McLENDON: We did it in the safety legislation this year---the cost for inspections and we allocated it and designated it to employ highway patrolmen.

MR. SINKLER: It has been a very convenient device in being able to get through modest legislation.

MR. STOUDEMIRE: The biggest advantage is that it helps you get a new tax through. You may not be able to get it through if you did not tell people that this is going to be pledged for this and this alone. Now that is, I would say, the chief advantage.

MR. McLENDON: I don't think it has been terribly abused.

MR. SINKLER: Well, probably the Highway Department has become too autonomous a kingdom. That's your real abuse. On the other hand, they've done probably a much better job. There are advantages as well as disadvantages.

MR. WALSH: Perhaps we can approach it in this way. I think your principal objection as much as anything is the fact that by earmarking

this they have, to a certain extent, completely divorced themselves from accountability to anybody.

MR. STOUDEMIRE: Well, this is the fault of the General Assembly, really, by not saying that there shall be a uniform sick leave, whether it's highway department or welfare. You see right now you've got one State agency that can take 18 days vacation; another can't get but twelve which I maintain is grossly unfair. And, really; it's because you don't have a general directive that applies to all people alike and this really has nothing to do with whether or not the 7¢ gasoline tax is used for black top roads. It's the matter of the lack of a general regulation on sick leave, appointment procedures and what all else.

MR. WORKMAN: I move that we proceed in the absence of a specific on earmarking and possibly come back to it.

MR. McLENDON: That we move on with consideration of our work unless someone comes back---

MR. WALSH; I say we ought to move on although I feel like it's a bad fiscal principle, it may be that---

MR. RILEY: Is there any way that we could tie in over-looking, override, whatever you call it, when the legislative committees take a look at the Highway Department's budget that no State moneys be spent that are not annually audited and so forth through the Budget and Control Board or something like that.

MISS LEVERETTE: I think that something definitely should be done and this is an opportunity to do it.

MR. STOUDEMIRE: They have their own auditors unless they have changed recently.

MISS LEVERETTE: Something definitely ought to be done even if the Highway Department is the only one. It is the one that is doing it and some method should be devised to make them accountable and I don't think it's going to hurt our highways any.

MR. WALSH: Where is that money being spent? You can't tell where it's going.

MISS LEVERETTE: It may be a question of honesty, but there is a question of power there, too.

Note: Discussion on G.A.O. is summarized because the tape was cut off at this time.

The discussion on earmarking of taxation lead into full discussion on State budgetary policies and the control of all State revenues regardless of whether they were in the General Fund or earmarked. Several members



of the Committee showed concern that the General Assembly really had no systematic way through its own agents to check on expenditure policies, budget requests, and the legality of all expenditures. It was pointed out by the Staff Consultant that our fiscal officials now spend a great deal of time in the pre-auditing function and that the same staff also perform the post-audit. This system of the same staff doing both auditings has worked well simply because of the quality of personnel who have been doing this work. The question was raised as to the wisdom of the State having a post-auditor similar to the General Accounting Office used by the federal government. It was suggested that such an office would audit funds in the name of the General Assembly as a post-audit, would have staff that the General Assembly could use in making its own investigations and inquire into the legality of expenditures, cost accounting and any other matter pertaining to taxation and expenditures in which the General Assembly is interested. Mr. Stoudemire pointed out that the Preparedness for Peace Commission report made shortly after World War II had dealt with this problem and had found a way to re-define the duties of the Comptroller General, the State Treasurer, the State Auditor and so forth so that they would be doing the pre-auditing and so that a post-auditor could be established. Consequently, a G.A.O. type agency would be established within the framework of existing financial officers of the State. The discussion pointed out that a G.A.O. office would be available to post-audit and investigate all State expenditures, both general and earmarked funds. It was a consensus among the Committee that such a provision should be added to the Constitution and that it be worked out by the Staff Consultant so as not to conflict with other constitutional provisions, but which would establish this as a definite constitutional principle. It was further pointed out that the establishment of a G.A.O. would require a re-definition by statute of the duties now performed by the Budget and Control Board, the State Comptroller General and the State Auditor. The function of the State Treasurer safe-guarding and controlling State tax collections and expenditures should not be substantially changed.

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MR. STOUDEMIRE: Mr. Chairman, I really think that since Mr. Sinkler is not going to be here tomorrow that we ought to discuss the next meeting day.

It was agreed that the next meeting after October 7th would be held on Friday, October 27th at 10:00 a.m. and that the meeting would end at 6:00 p.m.

October 7, 1967

MR. STOUDEMIRE: I think Mr. Knowlton did do a great deal of work on this for one of the Legislative Committees. The whole thing, as you said---

MR. McLENDON: Well, all this Corporation question is statutory.

MR. STOUDEMIRE: That's what he said. He said, "Kick out the whole thing."

MISS LEVERETTE: I brought a copy of the Corporation---if you want to refer to it.

MR. STOUDEMIRE: Apparently Mr. Knowlton is very much up to date on this thing because he answered my inquiry very promptly. He is a very smart attorney. I didn't know why---this doesn't necessarily validate it, but if you do check into other State Constitutions quite often you don't find anything on corporations. At least, very, very limited. The Model ignores it altogether. The new Maryland one ignores it altogether. Now, the Kentucky draft, they had a provision very similar to ours, long and drawn out. Kentucky---they keep a section on common carriers and public utilities, "shall provide for appropriate regulations by the legislature". They've got a general statement on corporations and that is about it. They've got a statement here on public warehouses which must be a particular problem in Kentucky. So they took out what was a section like ours. They did keep in there this thing about vote for whatever reason---stockholders meeting.

MR. McLENDON: What is the purpose of 2, sub-section (3)? "No corporation shall lease or alienate any franchise---" Is that in connection with the public sales act.

MR. STOUDEMIRE: I don't know. It looks as if in 1895 our delegates were concerned about railways and so on, they didn't like foreign corporations particularly and that's about it. To me it seemed more

of a resentment against some of the things that might have been going on. Section 21, "The General Assembly shall enforce the provisions of this Article by appropriate legislation", which in a way is going to take back all that they have said. Now, some of the attorneys tell me that just because a case hasn't been brought doesn't necessarily mean that Constitutional provision have no political---which is true, but if you do check the annotations in the Code, almost nothing has been brought in the State Supreme Court under this thing for ages. There's one little technicality there on the Public Service Commission. Mac, I think one question might be embraced in here because it is important to our well-being and that is, "Is the Public Service Commission a constitutional question, or a statutory one?"

MR. WORKMAN: Have anything in there now on it?

MR. STOUDEMIRE: Yes. Section 14. "A commission is hereby established ---as the railroad"---they changed it from railroad to what we now call it. Actually it doesn't tell you, "---which shall be composed of not less than three members, whose powers over all transportation and transmitting corporations, and duties,---shall be regulated by law", you see. I don't think, really---it doesn't guarantee anything.

MR. WALSH: Well, we come back to this question of whether or not we, on matters of that sort, we need to put some statement in the Constitution even though in practical effect, the General Assembly has to work out the details.

MR. MCLENDON: Several times we've seen the need for a general statement.

MR. WALSH: Pointing out that basic policies of these things ought to be regulated even though details are not spelled out. I gather that's what they had in mind when they put it in at the time. That was a matter of public concern.

MR. STOUDEMIRE: Public Service?

MR. HARVEY: Actually, it has no more place in there, though, than the Industrial or the Health Department.

MR. STOUDEMIRE: Gentlemen, now one angle that you might take, as I see it, might be this business of taking out the long drawn-out thing but stating a policy, could very well as I give to you on page 29, just the Sections 1 and 2 there of the Kentucky Constitution. This sort of mandates and shows your interest. I does really nothing, though. "The General Assembly shall provide for appropriate regulation of common carriers and public utilities as and to the extent required by the public interest." "The General Assembly shall provide by general law for the formation, organization, and regulation of corporations and prescribe their powers, rights, duties and liabilities" and so on. ---"The word 'corporation' as used in this Constitution shall include joint stock companies and associations."

MR. McLENDON: Well, that really is the way the General Assembly approached it over the last fifty years. Take those two sentences for a background for all the--

MR. STOUDEMIRE: Mr. Knowlton recommends you take the whole thing out.

MISS LEVERETTE: I think one of the things that has bothered him most has been this cumulative voting proposition and I notice they've got in sub-section 4, under 2, they covered that.

MR. STOUDEMIRE: Well, that's not a constitutional question.

MISS LEVERETTE: It is a provision in Title 12 under the statutory--- I don't see any need to include that.

MR. WORKMAN: Bob, put in a statement that "The General Assembly shall provide by general law"---would reinforce the ban against special legislation on corporations. It would set up everybody would have to be treated equally.

MR. STOUDEMIRE: Mr. Knowlton says that despite our constitution now, that they have passed these special laws re-chartering somebody illegally---I mean unconstitutionally.

MR. RILEY: That's in Section 2 here. Proviso in Section 2 permits that.

MR. STOUDEMIRE: In our present Constitution.

MR. WALSH: I think if we would put it in, I don't think we should put that in because I do feel that perhaps some general statement that everybody's got to be treated right---

MR. STOUDEMIRE: I'm more concerned, really, about a mandate on common carriers and utilities. It may not be bad constitutional policy to say that the Constitution is concerned that utilities and common carriers and monopolies are---it preserves the right under the Constitution---or to be properly regulated for the public interest.

MR. HARVEY: Maybe then a general statement that corporations are to be chartered by the Secretary of State.

MR. STOUDEMIRE: Well, how about that first sentence of number 2 of Kentucky there? "The General Assembly shall provide by general law for the formation, organization, and regulation of corporations and prescribe their powers, rights, duties and liabilities, and the powers, rights, duties and liabilities of their officers and stockholders or members." I don't know whether you need to define "corporation" or not do you?



MR. WORKMAN: It may be by virtue of the fact that this was recently studied and this wording put in there that it would tend to eliminate argument as to whether joint stock companies were, in effect, corporations even though they didn't have that name or operate in that capacity.

MR. HARVEY: It is interesting. I have the 1950 Report of the Committee and they reduced it down to about seven sections and in their definition they include counties, townships---no, I mean exclude it.

MISS LEVERETTE: Their definition here in the definition section says, "A domestic corporation means corporation for profit formed under the laws of this State".

MR. WORKMAN: The Jefferies reduced that down to---cut it in about half I guess.

MR. HARVEY: Here is a statement of general powers and general laws for the issuance of charters---

MR. WORKMAN: One section that they left in---I don't know whether it's still in said, "A corporation shall make---".

MR. RILEY: What do you think about putting a---do you think leave the definition out or put the same definition that we have in the Corporation Act for Section 1?

MR. McLENDON: I believe the constitutional statement is a little broader. If you are going to eliminate some of the other details you probably need a broader statement here, don't you?

MR. STOUDEMIRE: What do you mean Section 1, Dick?

MR. RILEY: Of our present Constitution. First thing, they define corporations and I say we either leave that out or incorporate the same definitions that we have in the Act which is a very broad definition.

MISS LEVERETTE: I would be inclined to say that a definition doesn't belong in a constitution.

MR. SMOAK: Certainly, if it's going to be the same definition that's in the Act.

MR. STOUDEMIRE: Would it be in order than to say---think in terms of the first section of the Kentucky Constitution and also the second one down to where it defines the word "corporations". Stop with "members" and then check this out with Mr. Myers as an underwriter for Mr. Knowlton. I am not so sure that we should just rely on one advisor. I would feel surer about it if you had another advisor.

MR. McLENDON: Well, do you think the last sentence, 2 (1) there is superfluous? I think maybe it needs to be in there. "The word 'corporation' as used in this Constitution shall include joint stock companies and associations." We have that same general language up in our present---

MR. HARVEY: You can let him expand it and add "having powers and privileges not possessed by individuals" and excluding municipal---

MR. STOUDEMIRE: Let me ask you gentlemen this. Up there in the second line of part 2 "---and the regulation of corporations", you say "the regulation of corporations and joint stock companies".

MR. McLENDON: Including stock companies and associations.

MR. STOUDEMIRE: It seems to me it would be better to insert it up there.

MR. McLENDON: They're making a joint stock company and an association a corporation for the purpose of this act.

MR. WALSH: Meaning that the General Assembly shall make special provisions---

MR. McLENDON: Treat them all just alike. Corporations, joint stock companies and associations---shall be treated as corporations. They're recognizing in this language that there are differences, obviously. Treat them alike.

MR. WORKMAN: Insofar as this Constitution is concerned. There may be other distinctions---

MR. RILEY: What is an association or a joint stock company?

MR. WORKMAN: I think that they may be getting at some insurance---

MR. McLENDON: Benevolent and Protective Order of Elks, selling insurance, I guess.

MR. WORKMAN: Woodmen of the World.

MR. McLENDON: And these burial associations all over the State. That sort of thing.

MR. RILEY: Well, "association" is a very broad word. That could mean college fraternity. I just would wonder what value it would be. Certainly the word "corporation" doesn't include all associations. We've got a little association going here studying the Constitution. I don't know if that's a legal term.

MR. SMOAK: I think generally it isn't, Dick. I believe that's true. At the same time, from the standpoint of constitutional law, I

think it's wise to include it.

MR. WORKMAN: I actually imposes no duties or obligation or restriction on these corporations, but it says "that the General Assembly shall provide for" them. Now, for example, the Citadel alumni is organized into the Association of Citadel Men which presumably would require but little regulation from the State, but under this thing it would mean that the State would have some purview over what was done by that alumni group.

MR. RILEY: This section of the constitution just covering organizations in toto.

MR. WORKMAN: Yes.

MR. RILEY: And you're not going to make anything but a broad statement that the General Assembly will provide for them.

MISS LEVERETTE: Are we talking about non-profit and profit making corporations.

MR. WORKMAN: I don't know what we're talking about.

MR. HARVEY: That's why I think maybe you come back to your definition as we have it now. You see it includes "all associations and joint stock companies having powers and privileges not possessed by individuals". And as you say, this Committee is an association if you want to use that term very loosely, but it has no powers not possessed by individuals.

MR. SMOAK: But it is conceivable that the legislature in some way might want to do something or pass a resolution that would have something to do with this group if they saw fit.

MR. HARVEY: But not to treat them as corporations.

MR. SMOAK: That's true, but possibly to regulate if need be.

MR. STOUDEMIRE: I think we might be coming to one error here, you see. I'm not sure we need to define anything because this defining is based on a lot of sections which follow. Now, if we're talking about doing away with most of this then I think "The General Assembly shall provide by general law for the formation, organization, and regulation of corporations and prescribe their duties and right" and so on and put a period and this would leave them free to say that a joint stock company is a corporation. We started over there in South Carolina, we say "corporation is defined". This is to clear up---it's the same thing we're talking about in all these five or six pages and if you're going to take all this out, I don't think you need to worry about the definition.

MR. SMOAK: That's right. Unless you're concerned with what Bill pointed out a minute ago and want to be sure that joint stock companies are included in here.

MR. McLENDON: Aren't they covered, Sarah, in the corporate act?

MISS LEVERETTE: There's no mention---

MR. McLENDON: Benevolent societies and burial societies---

MISS LEVERETTE: They have a separate---

MR. STOUDEMIRE: They are amply defined in 12, 11.2 and 11.3.

MISS LEVERETTE: Now, in 12, 759, they cover charitable, social, religious and other non-profit corporations.

MR. RILEY: I'm inclined to say, put the definition in and leave it like it is. I think the framers intended for this Article to cover anything that involved anything separate from individuals like they point out here or partnerships which was individuals working as individuals and I think that is an all-inclusive, broad section which is generally to say that any time in formation of any kind of association or organization, the General Assembly has authority to provide the laws regulating them or setting them up and so forth.

MR. WORKMAN: Well, they've got that authority without our saying so. So what we want to do is simply to make a broad policy statement.

MR. WALSH: That they have to do it by general law. Really, that's the key to the whole thing.

MR. RILEY: You say they have that authority without the Constitution.

MR. WORKMAN: All we want to do is to impose any sort of old view and requirement that they treat them all alike by general law statement because if what we don't spell out here as being prohibited, the General Assembly can do anyhow.

MR. SMOAK: Really, what we're doing is looking for a possible safeguard.

MR. WORKMAN: That's right. We're saying that the General Assembly can't treat one corporation in a different light from another corporation so long as they're in the same category. Now, I think that's what we really intended to do.

MR. McLENDON: Aren't we saying exactly what's in 2, Sub-section 1?

MR. WORKMAN: Yes. I think that the Kentucky 2 (1) is about what we want to say---

MR. HARVEY: Including the last sentence?



MR. WORKMAN: I don't think that's necessary because the Commercial Code that we've already got on the books indicates---it already sets up the definition and I don't think we in the Constitution ought to so crystallize business organizations that there might not be some other device or holding company or whatever comes to be current at a given time as a proper business organization. I don't think we ought to try to crystallize existing business structures in perpetuity in the Constitution.

MR. McLENDON: If you leave it out, aren't you also, by inference, saying, "well, we're not going to treat joint stock companies and associations as corporations".

MR. WORKMAN: No, we just said that it's up to the legislature as to how they're going to treat them because we're not making any constitutional judgement.

MR. STOUDEMIRE: The legislature would pass a law simply saying "joint stock companies are corporations" within the meaning of this regulation.

MR. WORKMAN: Any statute the General Assembly passes in this general area can simply say in parenthesis "including joint stock companies" if, in their judgment, they should be included.

MR. HARVEY: Or they can completely fail to regulate joint stock companies.

MR. WORKMAN: This would be a legislative determination, I think, rather than constitutional.

MISS LEVERETTE: If it hadn't already been in here we probably never would have thought about it.

MR. WALSH: Isn't the sole thing that we are trying to arrive at with corporations is to make a requirement that when the General Assembly regulates corporations, it must be by a general law and that they can't go around---in one area pass a law with regard to one corporation. Other than that we basically want to leave it up to them. As long as they do it by general law.

MR. WORKMAN: We maintain that as a general statement. Anything else we don't scrap we simply transfer it into the statute where it is supplemented and enlarged by what was done in the Commercial Code.

MR. STOUDEMIRE: I feel that it might pay---it may be better based on some of the other stuff Dan said about land rights and so on because we have had such long, detailed provisions in our Constitution, to end up with a simple, broad statement similar to the Kentucky one would still show that this is fully within the scope of the General Assembly to regulate and that by kicking out old 14 altogether that you did not intend to let corporations go helter-skelter.

MR. WALSH: I feel that we ought to make some statement.

MR. WORKMAN: Well, the Kentucky statement comes -pretty close, I think to saying what we want. Let me raise one question. It seems that we are in general agreement on this premise, but the thought I want to inject for some discussion before we move out of this area is this. Bob touched on a moment ago about regulation of utilities, monopolies and common carriers, question as to whether or not they shall be---assumed to be within the group in corporations or whether we mention them by category which brings me to this critical point. If---would it be a proper concern of ours to say in the field of utility regulation that the State in regulating utilities shall regulate all utilities which would bring Santee-Cooper and the Coops, General Electric, all producers of electricity, so that they are, in effect, governed and play by the same rules. This is a real firecracker now because this is a fight that has been going on for years and years. My personal contention is that the regulation of utilities should apply, on a blanket basis, to all corporations, whether they be public or private, engaged in the production of power. Santee-Cooper being the most notable example and I raise it as to whether or not we want to consider this in the constitutional light.

MR. WALSH: I think one thing. I think we do need---we are discussing private corporations. I think we do need to consider this question of the Public Service Commission in the realm of a positive command to regulate public utilities and, at the same time, I think we need to consider these other sections in the Constitution which limit the right of a public utility within a governmental sub-division. Take the contention that arises many, many times---public utilities will go out and dig your street up, traffic stopped and they'll say that they have that right---we've got to consider putting here some command that they are subject in certain areas to these local authorities. Otherwise, I don't see how you can---they can just run, I don't say they run wild, but I think that they get the idea that they can pretty well do anything they want to.

MR. McLENDON: Aren't they public utilities in the sense this term used here? Isn't it already incumbent upon the legislature to do that?

MR. WORKMAN: Well, I think that what Emmet is driving is that Duke Power Company under the right of eminent domain can come and cut through your backyard and have power lines, do whatever they want within that.

MR. WALSH: They don't have to say "boo" to anybody in the city about it and as a matter of fact it might be the most detrimental thing to the over-all development of a city---every city now has to have some sort of plan in order to qualify for any federal funds and it is only reasonable that a city have a plan for future development. But we had the situation where a power company came to one

of the main entrances to Spartanburg and they just went there and condemned one of the best corners.

MR. McLENDON: Emmet, you're right.

MR. WALSH: Now, at the main entrance to Spartanburg they've got a great big old horrible looking thing and this should have been subject to some regulation. I believe it's the area in which we ought to give some thought.

MR. McLENDON: Well, now, does it belong here or should we be able--- should we deal with it here in this section of these corporations that we are dealing with or is there some other part in this study where it would be more appropriate.

MR. WORKMAN: The circumstances that Emmet described, to me, are somewhat surprising because it would look as though the Public Service Commission would be the proper agency to restrain them from doing that.

MR. McLENDON: Well, you've got the private right.

MR. WALSH: They say they don't have anything to do with that.

MR. McLENDON: Your right was in the equity court, a temporary restraining order until such time as the matter could be heard on its merits as to whether or not they could be permanently enjoined. We've got one Company enjoined under this same right of eminent domain now. That is before they put anything into the ground. The minute they serve their condemnation proceedings, you have a certain length of time within which to file a return. Thirty days. We have enjoined them on the equity side of the court, an entirely different action and the court has restrained the Company from going through a man's field to provide electric power.

MR. WALSH: That is entirely again separate from the right of the governmental sub-division to pass upon whether or not what they're doing there is highly detrimental to the over-all development of a city.

MR. McLENDON: Well, then, you're having a conflict between the right of eminent domain which the General Assembly has given to a corporation and the right of a municipality. It's a conflict that needs to be dealt with somewhere, but do we need to deal with it here?

MR. RILEY: Well, if it involves the protection of the property owner, we do.

MR. STOUDEMIRE: You see, I think you've already got your protection as exercised under Article VIII, Section 4 under the franchise right. It says, "No law shall be passed by the General Assembly granting the right to construct and operate a street or other railway, telegraph---"

and all the other ballyhoo "for public uses or to lay mains for any purposes without first obtaining the consent of the local authorities, the court and control of the streets or public places proposed to be occupied for any such or like purposes".

MR. WALSH: Well, I think that particular provision---have we gotten to that yet?

MR. McLENDON: Well, that may be where---

MR. STOUDEMIRE: For your continuing thought if you're going to peg a utility more so than what it is now, as to what it can or cannot do, this would be your place.

MR. WALSH: Might be.

MR. RILEY: Well, I think the question could equally be raised outside the city, though. I don't think it's a municipal question only.

MR. WALSH: You've got a good point, Dick, because in Greenville you've got a County Planning Commission and they are planning in areas outside the city as big as the City of Greenville.

MR. RILEY: Well, the power company will go all the way across people's property up in the mountains that they have bought and held for years and years for mountain scenery and then they'll have a big line running right down the middle of their property---just ruins acres and acres for what they have it for and they complain to me that they don't have any recourse.

MR. WORKMAN: Well, they've got recourse---indirect recourse through the Public Service Commission, or should have.

MR. RILEY: The Public Service Commission doesn't have anything to do with that. They can get their damages. They can go into court and get their damages, but they say that a private company can go across my property, right down the middle of it, when they could move over less than a half mile and go down the street.

MR. WORKMAN: Under what provision of the Constitution, Bob, do utilities, private utilities, get this right of eminent domain.

MR. McLENDON: Right of eminent domain and it's set out in the statute law of the State exactly what these corporations can do.

MR. STOUDEMIRE: I don't think it's constitutional.

MR. RILEY: Then, Mike, in your case---your injunction, you say that you are arguing the merits of the particular location and so forth and the equity side---



MR. McLENDON: The equity side of the court. The condemnation proceedings have been halted by an injunction of the court until we can fight out the equities of whether or not this right of eminent domain given the power company, whether they are reasonably exercising their right of eminent domain or whether or not they're being arbitrary and capricious and that their line could be more reasonably placed somewhere else.

MR. RILEY: All right, now that ought to be in the Public Service Commission, shouldn't it?

MR. McLENDON: Well, that's your right in the Court of Common Pleas in the equity side of the court.

MR. RILEY: I've never heard of defending an action like that.

MR. McLENDON: There are many of them. I didn't know it could stop them, but we stopped them.

MR. RILEY: Then the individual property owner has recourse to have the merits determined.

MR. McLENDON: That's right. He can only have the merits determined in the court. If the Circuit Judge rules with him that he's entitled to a temporary injunction---normally the judge would give you a temporary restraining order pending a hearing on the merits which, of course, would have to be quickly disposed of. It's difficult. It's difficult for this reason. The cases have said and the courts have held that where the State gives a corporation the right of eminent domain, that the hearing judge shall take into consideration the fact that that entity has been clothed with some authority from the General Assembly and in order to say that they are unreasonable, you've got to go a long way. So, it's not easy. It's difficult.

MR. WALSH: As a practical matter, you don't have a great deal of relief.

MR. McLENDON: As a practical matter, it's difficult.

MR. STOUDEMIRE: Gentlemen, I think you're raising two points here, really. When we get to local government, I'm not so sure, to meet modern needs if our article is not going to have to be headed "local government", and therefore, some things designed for all local government before you get into dealing with municipalities and counties per se---the old franchise right here for municipalities apparently---the problem now is wider than a municipality and the other thing is, it might be that you are putting forth a good argument for the administrative procedures section of the thing that we have delayed.

MR. McLENDON: Well, my reaction to the discussion is that we ought to deal with this and then take these very powerful problems up at a later session..

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MR. WALSH: Let's finish corporations.

MR. McLENDON: We're dealing with business corporations here.

MR. WORKMAN: What we are dealing with here relates to private corporations which includes utilities.

MR. WALSH: The organization of them.

MR. WORKMAN: Yes. And we provide for their regulation and so on in here. Now, the thought still is in my mind---

MR. STOUDEMIRE: It would not include Santee-Cooper, I don't think.

MR. WORKMAN: ---that utilities other than privately owned utilities would not be affected by anything you do in this area here. I'm frankly surprised to find---I find no way here in eminent domain---even the suggestion that that power be granted to utilities and I thought it would be here.

MR. McLENDON: It is not.

MISS LEVERETTE: It is in the Code.

MR. WORKMAN: It's in the Code, but it looked to me that it ought to be---that is so great a grant of power that it looked like it ought to be at least justified in the Constitution. I don't see any implication here---all the way through it says, "ultimate sovereignty rests in the State over the waters and the land" and everything else. It doesn't say anything about the State's ability to delegate that right.

MR. HARVEY: Here's the closest they come to discussing it is Article IX, Section 20, "No right-of-way shall be appropriated---until full compensation" is paid.

MISS LEVERETTE: And your cross reference under there is---

MR. HARVEY: A corporation has the right to take it, but it says you've got to pay full compensation.

MISS LEVERETTE: And your cross reference under there---your cross reference there is as to condemnation of the light and power companies, See Code---if it were anywhere else the reference would be to the other Constitutional---

MR. WORKMAN: Let's move on then. I think that when you relinquish the sovereignty which exists in the State, there ought to be some recognition of that in the Constitution somewhere.

MR. HARVEY: How about in Section 1, "The General Assembly shall provide for appropriate regulation of common carriers and utilities, both

privately and publicly owned to the extent required by public---"

MR. McLENDON: Well, here, aren't you dealing with business corporations aside from the ownership of a public utility? You're dealing with two separate matters. You're dealing with a private---this public utility that they're talking about is the Carolina Power and Light Company, South Carolina Electric and Gas and the railway corporation.

MR. STOUDEMIRE: Yes, that is what they are talking about here.

MR. McLENDON: They're not talking the Aiken Water System which might be a public utility or the Santee-Cooper. This thing deals with corporations profit.

MR. WALSH: Right. I think that's the difference there.

MR. WORKMAN: These are business operations.

MR. McLENDON: These are business operations we're dealing with, not public corporations.

MR. WORKMAN: My concern was with the citizen who is the recipient of the services whether they be publicly inspired or privately inspired, but it may not fit in this particular area.

MR. McLENDON: Well, shall we then see what we can do with 1 and 2 or are we going to---where do we stand then, what conclusion, if any, have we reached?

MR. STOUDEMIRE: I think the first thing would be, Mac, to find out if they want to stick with sentence number 1.

MR. McLENDON: "The General Assembly shall provide for appropriate regulations of common carriers and public utilities as to the extent required by the public interest."

MR. WALSH: Do we have that in this private corporation thing? I would like to see us put a separate public utility section, maybe and a little bit broader than this.

MR. McLENDON: 2,(1) seems to me to be what we are really after.

MR. WALSH: Right. That's right 2 (1) and not 1.

MR. STOUDEMIRE: The only thing is, in the Article that we are dealing with, we are placing in the Constitution---you are kicking out the Public Service Commission, you see and your constitutional history would say, I think, would say that if you're going to treat it that it probably would come under---

MR. WALSH: I don't believe we ought to take up Public Service Commission, but I do think we ought to take up private corporations exercising public functions which is a public utility.

MR. WORKMAN: Let me make a suggestion. Getting back to the fact that we are dealing with the Constitution. If we were to include under the general article of Corporations these two statements: Number 1, "Shall provide for appropriate regulation of common carriers and public utilities, both private and publicly owned to the extent required by the public interest". Now, what we're doing is say, "that the General Assembly shall provide for the appropriate regulation of common carriers" because it ultimately is a legislative decision on this as to whether they're going to make---but we do here in the Constitution, we indicate that the General Assembly should concern itself with the regulation of utilities, whether privately or publicly owned. We don't tell them what they should do about regulating them, but we say they should be concerned with them and then these things that I bring up, for example, the case, Dick, you talked about the power company running across and having no recourse about it, conceivably you would have recourse possibly through the Public Service Commission which could make some, at least remonstrance in there because the company comes within their purview, but if that were an REA or Santee-Cooper, you'd have no recourse at all because they are not accessible to any protest. They stand on their own and nobody can do anything about that. By putting in here, "---and utilities whether publicly or privately owned", then we kind of point up to the legislature that you should concern yourself with protecting the public against all utilities which would include eminent domain or anything else. That way we don't bog ourselves down in the statutory---

MR. STOUDEMIRE: You advocate striking the word "public" then?

MR. WORKMAN: No, I would say "for appropriate regulation of common carriers and utilities, both publicly and privately owned as and to the extent required by the public interest" and then pick up 2 (1) so we'd cover common carriers and utilities, tell the General Assembly to take charge of these and we also tell them to take charge of corporations.

MR. MCLENDON: I think there is a fallacy in your argument. I just think---you're dealing here with a business corporation of four or five or ten people who formed a business corporation and that's what this thing is set out to regulate and on the other hand, you have the whole public interest being dealt with by the General Assembly which creates Santee-Cooper and these water systems and all these other things that are under the control and regulation of the General Assembly---you're talking about two separate things. You're talking about public ownership and you're talking about private ownership and you're dealing with them and throwing them together into the same sentence and is just inconsistent.

MR. WALSH: I think it is because the profit from the power company goes into the pockets of the stockholders.

MR. MCLENDON: That's right. We're dealing with different things.



MR. WALSH: The profit from Santee-Cooper, if any---I don't know where it goes, but it is certainly there somewhere and supposedly it's subject to the control of the General Assembly.

MR. McLENDON: It is. We've got twenty-five pages in the annual--

MR. WALSH: You could put a section in there and get it all back if they wanted to, but you couldn't do it with the power company.

MR. WORKMAN: My thoughts don't go to the question of what happens to the money or whether or not a profit is made, but to the question of regulation.

MR. McLENDON: Well, that has to do with the profits.

MR. WALSH: Internal operation. It has a big thing to do. You can't separate---

MR. McLENDON: Maybe all under a separate section, but I can't see where it belongs in this section.

MISS LEVERETTE: If you put this in a separate section, you're going to have it sitting over here by itself because there's not another thing.

MR. WALSH: I think you need to put more about public utilities in this Constitution than this little one sentence about public utilities. I think that's the wrong place. We ought to deal with private corporations, their organization by the general law. Then we ought to take public utilities.

MR. RILEY: Your idea is to leave number 1 out.

MR. McLENDON: That's my idea, too. Then deal with this other matter somewhere later.

MR. STOUDEMIRE: Really, as I see it, paragraph 2 here ought to be your first one because South Carolina Gas and Electric is also a corporation, is it not?

MR. McLENDON: Yes.

MR. STOUDEMIRE: And be dealt with.

MR. WORKMAN: And all common carriers.

MR. STOUDEMIRE: But what they're saying here then is reverse the order, that there are some corporations which need a further special interest, name the common carriers and utilities and make it the second---

MR. WALSH: I don't think make it the second. I think we ought to put it in a separate thing and incorporate some thoughts out of this

Public Service Commission Section, under a heading "Public Utilities", perhaps, in the Constitution.

MISS LEVERETTE: I think Bill has a definite point there if we look at this thing from the standpoint of the regulatory power of the General Assembly. That's what we are thinking about and relate it to those corporations that are public utilities and to your private as well. We're looking at it from the standpoint of giving the power to the General---rather, setting it up under the General Assembly. Now, if it were legislative, I'd say separate because you ---

MR. WORKMAN: It may well be. Now, Emmet and Mac both raise the point that we've got differences in complexion of Santee-Cooper and these other things and they ought to be treated separately and I say they can be treated separately. So, it's up to the General Assembly to determine the degree of separability or how they going to treat them. All I'm interested in doing is in the Constitution saying that the General Assembly shall regulate utilities, all utilities, no matter how they are owned or set up, but it doesn't impose any burden on the General Assembly that they don't want to assume. If they say, "Well, we think in the regulation of utilities that we're going to take REA coops or we're going to take Santee-Cooper or we're going to take anything else, or municipal owns it and we're going to set that aside and treat it separately". That's all right because it says the General Assembly shall provide for the regulation. They provide thereby, but at least we constitutionally mandate them to concern themselves with the regulation of utility---of all utilities.

MISS LEVERETTE: And if you are doing this from a statutory standpoint, then I could see separation because you would be getting into the specifics. To me, the fact that this is a regulatory, "The General Assembly shall regulate---" these things.

MR. WORKMAN: Within the public interest.

MR. WALSH: We are talking about one time regulating public utilities. The second time we're talking about requiring the General Assembly to provide for the physical organization of corporations for profit by general law. Those two things are wholly disconnected. They are not in any way connected one with the other. The regulation of a corporation as to what it does and the providing for its initial organization are two different things.

MR. WORKMAN: But under corporations, that is as close a generic title as we can get to treat with both of these things because in every section we've come, we have got a great deal of items---a great number of items which may be somewhat tenuously related one to the other, but we group them arbitrarily so that we don't clutter up the whole Constitution. I think "Corporations" as a general article is sufficiently broad to include these two things because we're not getting in to the details of regulation. We say on the one hand that

"the General Assembly shall provide by general law for the formation and organization of corporations". This gets to their business structure. We say we treat all corporations alike in regulating their reports, their procedures, Commercial Code approach. On the other hand, we say---we get into the regulation---we say, "The General Assembly shall regulate corporations, common carriers and utilities". Another affirmative statement imposing on them the concern of regulating these things. I don't see any inconsistency.

MR. McLENDON: A corporation like these water systems around the State and the Santee-Cooper actually is an arm of a political sub-division of the State and here we are in a business corporation section of the Constitution.

MR. HARVEY: Let's change it.

MR. McLENDON: I agree with that.

MR. HARVEY: Corporations and public utilities.

MR. McLENDON: Well, it ought to be separated. We're just dealing with cats and dogs in the same sentence and they're just different.

MISS LEVERETTE: But we are dealing with entities that affect the public interest.

MR. McLENDON: No doubt about that.

MISS LEVERETTE: And therefore they need to be controlled or regulated by the General Assembly. It is the regulatory aspects---putting them in a statutory regulation, then if you wanted to sub-head them or separate them or put them in a separate code title you could do that.

MR. WALSH: It seems to me that the regulation of public utilities is almost equal in status as the right of taxation. It's so vital, so important and what they do can have such a fundamental effect upon the people of this State that it deserves a separate section, separate treatment and separate safe-guards for the people.

MR. HARVEY: Well, let's decide what we're going to do and then decide whether the two should be separated.

MR. RILEY: Does Kentucky have theirs one section entitled "Corporations" only?

MR. WALSH: Kentucky, I believe, just had one little sentence.

MR. WORKMAN: We've been reading Kentucky which has got---

MR. STOUDEMIRE: It calls it "Commerce".

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MR. RILEY: Commerce? Well, that's pretty good. Let's just entitle it "commerce" instead of "corporations".

MR. WORKMAN: Commerce---the Kentucky thing, you've got them side by jowl.

MR. RILEY: But the title of the article is "Commerce" rather than "Corporations". I think that's a valid point. These are not corporate questions and as far as laying out the Constitution properly---under corporations, I don't think you'd have---

MR. HARVEY: Theoretically, a public utility could be owned by one person.

MR. RILEY: Let's just change the title of the article to "Commerce". That suit everybody?

MR. SMOAK: I don't know whether that's more confusing. I think that would be confusing.

MR. McLENDON: I think it's just too general. What does "commerce" mean? It means running up and down the high seas selling and buying.

MR. STOUDEMIRE: They did go from the word "corporations" to "commerce" for whatever reason.

MR. RILEY: I imagine that's the reason. Same as has been brought out here. "Corporations" is a legal term which means a certain---and it has nothing to do with public utilities.

MISS LEVERETTE: There's nothing else in---if you look over the provision of the Constitution, there's nothing that would confuse commerce, would it? It would logically fit into---

MR. WALSH: Let me ask your thinking on this. If you put this one sentence in, does that mean you're going to leave out everything about the Public Service Commission, everything about the grant of right-of-ways, everything about the ability of a utility to operate in a town, county?

MR. WORKMAN: That's not now in, which you're proposing that there be something put in.

MR. WALSH: There is something in the Constitution now. Under "Municipalities" you say that they can't---but it seems to me that the logical place---public utilities looms so large in the light of our State that we ought to have a separate section, "Public Utilities" and we there ought to say to what extent they have the right of eminent domain.

MR. McLENDON: We need to keep the terms separate.



MR. WALSH: We ought to separate that---separate a public utility as a private corporation from the right of eminent domain of a political sub-division of the State of South Carolina. They are entirely two separate and distinct---

MR. McLENDON: Well, they're treated differently.

MR. WORKMAN: Only in terms of ownership. So far as the person on the receiving end, the property owner, the guy across whose farm they're coming, it could be---nothing could be more extraneous to him as to who owns this monster that's coming across his property. And I'm thinking in terms of regulating so that he has the protection.

MR. STOUDEMIRE: Bill, I think that the General Assembly can do more things now than what we are giving it credit for. For instance, I think the General Assembly of South Carolina now could require municipal water works, by law, to be approved by the Public Service Commission. It has not done so. It requires an independent, quarterly water test be made by some laboratory which is a regulation of municipal water supplies and so on.

MR. RILEY: The Public Service Commission does that?

MR. STOUDEMIRE: No, no. By law. What I'm saying is---you see, I think under these general things that we've been talking about, it does give your General Assembly a great deal of freedom which it has now to require that publicly owned things conform to certain standards if the General Assembly wants to enact this. It's by statute, I believe, that water---Spartanburg city water rates do not have to be approved by the Public Service Commission.

MR. RILEY: But you think by statute that they could make them---

MR. STOUDEMIRE: They could, you see. The ones out of town are---are approved by the Public Service Commission.

MR. RILEY: You don't think that's a basic that we ought to have in the Constitution?

MR. McLENDON: I don't think so either.

MR. WALSH: But I do feel, for instance, we say Public Service Commission handles utilities. They do not have figures to base the rates on that they approve. They just look at a suggested rate and approve it if they see fit---

MR. STOUDEMIRE: Emmet, can you correct that by the Constitution? I don't think you can.

MR. WALSH: I don't think you can, but I think that if we feel that they there ought to be regulations of private corporations that are operating in the public realm, then I think we ought to say so in the Constitution. Give the people some protection on specific things.

MR. HARVEY: I'm willing to look at any proposal you have---further protection other than just this sentence you've got labeled one here on page 29. Anything additional you want to put in, including transferring something out of this municipal section of Article VIII of the old Constitution in regard to protecting municipalities---but for the sake of moving on, I'm going to move that we call this "Commerce" and that we incorporate basically the two ideas to start with, contained in 1 and 2 of page 29 of your working paper.

MR. RILEY: And I'll second the motion, but let's, by way of discussion, I want to see if we can say under---do you want quasi public utilities such as Duke Power and so forth to come under the category of one or of two?

MR. HARVEY: Of one.

MR. RILEY: If you think that, then I think we ought to put language in there that we started out either owned publicly or privately. Put in the word "public utilities" or "public utilities and quasi public utilities" which is a legal term, uncovering some of these companies.

MR. HARVEY: He suggested "utilities both privately and publicly owned".

MR. RILEY: But you want public utilities.

MR. STOUDEMIRE: But my definition of public utilities now is Duke and S. C. Gas and not Santee-Cooper.

MR. McLENDON: This word "public utilities" here means private corporations serving the public interest. Not a utility that is owned by a municipality or the State or any arm of the State government.

MR. HARVEY: We would change that.

MR. McLENDON: That's what you proposed. That's what I---I don't propose, but that's your motion. Your motion would contain the word "public".

MR. WORKMAN: Would substitute for the word, "public utilities" the word "utilities, both publicly or privately owned".

MISS LEVERETTE: I think, Bill, "public utilities" has a connotation, though, "public utilities" as such as opposed to "publicly or privately owned". Don't you, Dick, think that a public utility---when you speak of a public utility, you're thinking about what it does---the beneficiary---more than---if you take that out and say "utilities" and put the onus on ownership, wouldn't that make a difference?

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MR. RILEY: And to be all-inclusive, can you think of a utility---

MR. WORKMAN: That doesn't fall in that category.

MR. RILEY: That isn't public---

MR. STOUDEMIRE: "Public utility" here is referring to a private corporation.

MR. McLENDON: That's why we're dealing with two separate things.

MISS LEVERETTE: "Public utility" has a connotation---I agree with putting this in here, but I think if we do it by striking out "public" that you're going to lose something.

MR. McLENDON: Would there be any virtue if any other of the fifty states deals, in a section on corporations---where they have them, with a privately owned public utility or a municipally owned governmental utility which is an entirely separate situation.

MR. RILEY: Well, all we're trying to say is for the General Assembly to regulate all these different animals. It looks to me like we can just instruct Bob to make a comprehensive statement with number one which in his legal opinion covers all such. Do we want to include municipal utilities in here and governmental utilities, water and sewer districts and stuff like that?

MR. McLENDON: My judgment is you're making a terrible mistake constitutional-wise to lump the two together. I think there's merit in both positions in separate sections, but I don't think they have any consistency in action in the General Assembly or the thought in the public's mind nor the court's mind.

MR. STOUDEMIRE: I will say that if you are going to regulate Greenville Water Works and Santee-Cooper that then you need paragraph three.

MR. McLENDON: That's right. You're going to need something.

MR. SMOAK: Same article, but a separate statement.

MR. STOUDEMIRE: It needs to be a separate thought, wherever it may lie.

MR. SMOAK: But I think it ought to be right here. I believe this is the place for it.

MR. McLENDON: It needs to be a separate thought in my judgment.

MR. WORKMAN: Well, rather than bog down the whole morning, let me move that we accept---

MR. McLENDON: We've got Brantley's move now.

MR. RILEY: Ask him to amend it. Go ahead.

MR. WORKMAN: Would you accept an amendment that we tentatively agree on acceptance of, on page 29, the Kentucky Constitution---the acceptance of number one as is and number two paren one, as is, less that concluding sentence about the definition of corporation, so that with the understanding that a third section or statement might be added to accomplish what we are trying to do in the field of regulation alone.

MR. HARVEY: Yes. I'll accept that.

MR. WORKMAN: And we can come back to that.

MR. HARVEY: Then, do you want to leave it as "corporations" or do you want to change it to "commerce"?

MR. RILEY: Commerce.

MR. WALSH: I'd rather leave it as corporations.

MR. McLENDON: Why don't we do this without getting into the hassle over the title, let's decide whether or not these three substantive matters that we've discussed are acceptable? One is that we take number one, second matter is that we take number two, sub-section one and exclude the last sentence and that we hold this other matter in abeyance pending further drafting of something that we can talk about---then we can talk about changing the title later, couldn't we, Dick?

MR. SMOAK: Well, we agreed that it will go in here, though.

MR. McLENDON: In here.

MR. STOUDEMIRE: And you say hold the question of "governmentally owned utilities".

MR. McLENDON: That's right and draft us something that we can look at and talk about.

MR. HARVEY: Again, you come back to the technical question of public utilities not necessarily a corporation.

MR. RILEY: That's right and I take the position that public utility can mean the Greenville City Waterworks.

MR. WALSH: I think that it can mean---that's the way it has been understood in our Constitution, in our laws, bond issues.

MR. STOUDEMIRE: I think you look up words and phrases something's going to say a "public utility" is Duke.



MR. HARVEY: You do agree it's not necessarily a corporation. An individual can own a rural telephone company.

MR. McLENDON: Under the statute now, one person can own a corporation. So I can incorporate---

MR. WALSH: The Chester Telephone Company was owned by an individual for many years. It was a public utility.

MR. HARVEY: Your title---

MR. WALSH: That's why I think about this question of regulating, your public utilities ought to go in a different section.

MISS LEVERETTE: Aren't we thinking about the end result when we say "public utility". We're talking about not who owns them, but we're talking about what they do.

MR. McLENDON: We may be talking about that, but the court has treated them separately.

MR. RILEY: I know I have read in court cases references, many references to "quasi public utilities". In that they're talking about Duke Power and---and they're distinguishing "quasi public" from "public" meaning that public or publicly owned. Now, I might be wrong about that.

MR. McLENDON: Well, let's see if we can move on then and we'll hold two matters in abeyance. Are we agreed that we can take sub-section 1, here, "The General Assembly shall provide--" Can we agree on that? Any objection?

MR. WALSH: I couldn't go along with that. I think that this thing is of such great importance that that number 1 ought to be taken out and ought to be put in a separate section, but I don't want to hold it up. I want to look into a little bit. Maybe I'm wrong.

MR. McLENDON: Then we can look into it when he drafts the third point. It will be back for discussion at that time. All of this is tentative anyway. All right. Shall we agree on 2, sub-section 1, with the exclusion of the last sentence. Now, 3, are we agreed that we will have Bob draft us something in reference to the other governmentally owned public utilities and, at the same time, we will consider the change of designation from "corporation" to "commerce". Consider it at that time. Do we understand now what we've done, and I believe we have the tentative understanding with Emmet that---of course, all of this is tentative---this number one will be up for discussion again.

MR. WORKMAN: Either enlargement or transfer.

MR. McLENDON: I think that's the best we can do.

MR. STOUDEMIRE: You've got a Public Service Commission now in the Constitution, but that didn't make them furnish you the information you wanted. As I tell my students, you cannot take salvation in a constitution, you must get your salvation at the polls.

MR. WALSH: I guess you're right.

MR. McLENDON: Bob, what is section 4? Let's move on down there. ---of this Kentucky thing, what is that?

MR. STOUDEMIRE: That's a whole hog mess about casting votes in a corporation which I know absolutely nothing about and I---. Mr. Knowlton says that it is not constitutional and, quite frankly, it's sort of over my head.

MR. SMOAK: I don't know a thing in the world about it, but unless there are some basic individual rights to be preserved, I don't see---

MR. HARVEY: Have you ever been a minority stockholder in a corporation?

MR. WALSH: It's a factor that a world of lawyers and people feel right strongly on.

MISS LEVERETTE: I'm like Bob. I don't know anything about this, but I think on this fourth section, you're going to run into problems on this cumulative voting proposition.

MR. STOUDEMIRE: I would assume that we would use our constitutional wording if we're going to keep that, rather than the Kentucky.

MR. HARVEY: No. No. The Kentucky is better as Charlie Knowlton points out because our present Section 11 of Article IX says they shall vote "as many as the number of shares he owns" and Charlie quite correctly points out that by your charter you may wish to fairly point out that you have some non-voting stock and this Kentucky takes care of that situation, "in the aggregate shall be entitled to vote---under the charter". In other words, if you own twenty shares of voting stock and can vote it aggregate, you own twenty shares of non-voting stock---

MR. STOUDEMIRE: Well, why do you give constitutional status to this thing and nothing else.

MR. McLENDON: When your Section 2 (1) says it shall be regulated.

MR. STOUDEMIRE: You have due process and all your other safeguards.

MR. HARVEY: Well, number 1, it's in our present Constitution. Number 2, Kentucky thought it important enough to have in there. Those carry a little weight. Number 3, we're talking about---if you've ever been, or represented, a minority stockholder in a corporation, it can be a right treacherous thing.

MR. WALSH: You're right.

MR. McLENDON: I've been involved in that, too. Isn't it statutory on---. Can't you take care of 4 in the statute? Isn't it already taken care in our Corporation?

MISS LEVERETTE: I think it's taken care of.

MR. STOUDEMIRE: If a stockholder is getting rooked, it's statutory to see that he is no longer being rooked.

MR. WALSH: But, again, in a Constitution we need to think of basic rights of people as opposed to a majority. Really, all your Bill of Rights is intended to give me, as opposed to 1,000 people, certain basic rights that that 1,000 can't take away.

MR. STOUDEMIRE: I go back to due process of law clause.

MR. RILEY: You're not protecting a minority here. All you can say is that there's a hundred shares out and a man owns one, he's got one vote and he's not protected a bit more by this than his minority represents.

MR. STOUDEMIRE: For whatever it might be worth, the New Jersey '47 Constitution ends up doing about what you have agreed up to this point. "The legislature shall pass general laws under which corporations may be organized and corporate powers of every nature---subject nevertheless to appeal or authorization at the will of the legislature". In other words, just a broad---

MR. McLENDON: I think we are protected under 2 (1) there.

MR. HARVEY: Certainly, under 2 (1), it gives the power to the legislature to do something about this if it choose.

MR. WALSH: You're talking about cumulative voting. When you guarantee cumulative voting, it is just one small peg to hang your hat on and give you a little bit of leeway to get out of a difficult situation.

MR. WORKMAN: In our routine of transferring constitutional material that we think should be left out and put in the statutes with respect to that which is included in corporations, we'd call the attention of the General Assembly to the desirability of having a statutory protection for minority stockholders as is reflected in the present Constitution.

MR. McLENDON: I think it's in the Corporation Act of 1961.

MISS LEVERETTE: 1216.20 on cumulative voting. "Each holder of shares is entitled to vote in an election---shall have the right to cumulative votes either by giving to one candidate as many votes as shall equal the number of directors. Distributing the votes and so on---"

MR. McLENDON: So, you're protected, I think---

MISS LEVERETTE: I would make one suggestion. I don't know whether there is anything on it, but the Corporation Code has the Reporter's notes attached. They're not in here, but we might look at the Reporter's notes on this and see if he makes any mention of the constitutional provision.

MR. McLENDON: Would you look that up for us, Sarah, so that we'll have it next time?

MR. STOUDEMIRE: Your minority rights, are they protected in the Constitution now?

MR. HARVEY: Section 11 is this cumulative voting.

MR. STOUDEMIRE: Well, it appears to me the Constitution has done you no good.

MISS LEVERETTE: The statement under this section that I just read: "This section implements South Carolina Constitution Article IX, Section 11".

MR. HARVEY: I'm putting this out for study and I'm a little inclined to agree with you that it's statutory, but for instance, the Jefferies Committee had that and then had the one on prohibiting the issuance of stock unless it was actually paid for in labor or money and a few other basics.

MR. McLENDON: Let's assume that it is statutory, but there's no harm in it, is there, in putting it in there.

MR. WALSH: I maintain that there are certain things like that that ought to go in even though they're statutory for the simple reason that they can affect a very large number of people.

MR. McLENDON: Well, is the language in 4---have we studied it enough to understand what's in it and what it does say and we would vote to decide whether or not we want to put it in.

MR. WORKMAN: I would not be in a position to comment as to the merits of any of this, but I raise the question that one of our responsibilities of the Constitutional Revision Committee is to eliminate as much detailed matter as is possible consistent with the protection of the rights and the conduct of government. My feeling would be that this would be statutory rather than constitutional.

MR. STOUDEMIRE: Now, you notice Mr. Knowlton also said, if you read his comment, he goes on a little bit longer on this section 11. He says he thinks that, another protection in there is that it really ought to be in the articles of incorporation---I assume when you form a business. About who votes and not cumulative and so on in addition to your laws. Over on page 26.



MR. HARVEY: Not only in the by-laws, but, of course, as Sarah pointed out, we are now protected under the Code.

MISS LEVERETTE: I detect a tendency sometimes to attempt to emphasize by placing in the Constitution something that has already been taken care of by statute. Do we accomplish anything by saying again something that is already provided for by statute and should be. People are going to be inclined to go by statute, rather than the Constitution. We're not going to gain anything by adding it in there even though we feel strongly about it.

MR. SMOAK: I think we have to decide whether or not it's a matter of basic law.

MR. WALSH: I think you're right. When you come right down to it, we don't need a constitution. The General Assembly can do anything, but each instance we're trying to determine is it something so basic and fundamental that we think mention should be made or provisions put in the Constitution.

MR. McLENDON: I don't think it belongs in here. I think it's not fundamental. We all have rights---

MR. STOUDEMIRE: Another thing to consider, too, gentlemen. Does your past history show you that this subject matter has been violated seriously? I don't think it does, does it? In other words, have stockholders been getting rooked, generally?

MR. McLENDON: If they had, the General Assembly would have had some---

MR. STOUDEMIRE: Sometimes you do go and put something in a constitution that may not be constitutional. If there is great over-riding evidence that this is the only way that you can correct this thing, even though it's not constitutional---the question I raise, here, is would that type of reason be true in this situation and I doubt that it would be.

MR. RILEY: As far as your basics are concerned, I would say under your Bill of Rights section and individual stockholder would be entitled to his pro-rata vote, would he not?

MR. STOUDEMIRE: Federal, too, wouldn't he?

MR. McLENDON: All right. Shall we than not discuss 4 further?

MR. STOUDEMIRE: Mr. Chairman, we've got the broad statement there on common carriers. I want to make sure we all understand. We've got the broad statement, the General Assembly by general law makes corporations and then the assignment to me to see if I can work out something on governmentally owned utilities. And the title of the article.

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MR. McLENDON: Are we on Militia now? We'll turn this over to Mr. Workman.

MR. WALSH: Let me ask one further thing. Then all this thing on eminent domain, right-of-way and so forth, is it left completely out or are we going to consider this---

. . . .Break. . . .

MR. McLENDON: Well, we're down to Militia, page 31.

MR. STOUDEMIRE: You'll notice that I have---I took the liberty of enclosing a letter here that was written to Brantley from the Adjutant General, pages 35 and 36, because it wasn't my letter---. And then there's some comments by the Maryland thing. On the militia, gentlemen, you have several approaches. A great many of our states get rid of it in a great hurry just by sort of saying that the Governor is Commander in Chief of the military forces and they can be used for the old insurrection type statment and that's about it. Others go into it in a little bit more detail. As I told you in your report, it seems to me that the Adjutant General here really goes into too much detail for a constitution. In other words, he would allow the Governor to appoint an Adjutant General, but then I feel that his specifications are too long for a constitution and might become outdated as well as some other things so that's your general approach.

MR. McLENDON: What's wrong with the section we have? What are the fallacies in it?

MR. STOUDEMIRE: Outdated. Where we say the militia of 18 to 45, but also you have a National Guard and so on that goes beyond 45 that you normally call part of your reserve forces, don't you?

MR. WORKMAN: Yes, but I think the distinction here is that the National Guard is the organized militia and which they regulate themselves as to age of entrance and age of retirement whereas here, the militia represents that group of citizens who can be called out without any training or without any warning or anything. They just said you are mustered into the service right now. That's why they put the age forty-five on.

MR. STOUDEMIRE: Well, the Adjutant General breaks it down over here on page 35, but it's an awful long section.

MR. McLENDON: Didn't we pass a military code last session of the General Assembly, Brantley?

MR. HARVEY: Yes, I think so.

MR. WORKMAN: Did you have in the military code any provision for a home guard or something in lieu of the National Guard---

MR. HARVEY: Seems to me it dealt more with---like a uniform code of military justice for the organized---

MR. McLENDON: The organized militia. That's right.

MR. STOUDEMIRE: Now, you see, the Model takes off on the basis that you would have something supported by law. "He, the Governor, shall be the Commander in Chief of the armed forces of the State except when they shall be called into the service of the United States" and they call them out to execute the laws and so on---Commander in Chief of the armed forces and then I would assume that this would leave the militia as we now know it, 18 to 45, and the National Guard you could define by law.

MR. WORKMAN: I think that what we have in the present Constitution is generally acceptable without going into the details that General Pinckney proposes and that the decision that we need to make is---one of the basic decisions is whether or not we want the Adjutant General elected by the public or appointed. We are the only state in the Union where the Adjutant General is elected as a constitutional officer. The only state and it has been that way, I think, at least twenty years. Now the question is whether we want to have the Adjutant General appointed. My own inclination is that it ought to be an appointive office, rather than an elected office. Election of a military officer is not good practice.

MR. McLENDON: We got into a political hassle with it at the last election.

MR. WALSH: I think that is bad, too. I strongly feel that an office like this ought to be appointed by the Governor.

MR. RILEY: I think it ought to be approved by the Senate, though.

MR. WORKMAN: I would suggest that, too. That there be Senate confirmation because there have been, over a period of years, some rather bad appointments in other states where there have been political pay-offs to people who, obviously, were not qualified to carry out this right important job.

MR. SMOAK: This is a very important job, too.

MR. McLENDON: It's becoming more so.

MR. SMOAK: More so and these men are in a position to have to represent the State on all kinds of things in Washington with the Department of Defense and you've got to have a good representative in that job. If you don't, it's going to hurt your state.

MR. WORKMAN: Furthermore, he is now, and will be, in my judgment, assuming a still greater role in the realm of civil defense when and if that's necessary and, to a large degree, becomes a very important administrative officer of the State of South Carolina in an area which could be almost supplant the civil government.

MR. McLENDON: In this organization that goes into effect in case of atomic attack, he is high up---

MR. SMOAK: Vital role.

MR. STOUDEMIRE: I would recommend there that it be approved by joint vote of the legislature. The Governor appoints.

MR. WORKMAN: Now here the question is whether we want to inject a new routine into it or not.

MR. McLENDON: With the consent of the Senate, I think, would be a more appropriate approach.

MR. WALSH: I rather like the idea of the Governor appointing him, by and with the consent of the Senate.

MR. WORKMAN: Let's move one by one through there then and start off with Section 1 which I think doesn't need much change at all. If it doesn't need much change, we might as well leave it as it is.

MR. HARVEY: You're not going to tie in the National Guard or relate it to this?

MR. WORKMAN: No, for this reason. That we are now under the pressure of Mr. McNamara undergoing considerable pressures to rearrange the reserve components. We don't know what's going to happen under his administration or anybody else's. I don't think that we ought to crystallize our existing militia structure to the extent that we've got to come back and amend the Constitution if it is determined that there will be a merger of reserve and Guard functions or some rearrangement within that. If we keep the general language that the militia which we are sub-dividing here to the organized and the unorganized militia, and that, I think, is general enough to allow some leeway for restructuring the Guard, the reserve, plus this home guard, unorganized militia if we need to call that up.

MR. SMOAK: The important thing is and we'd better have this provision to fall back on if it is ever needed.

MR. STOUDEMIRE: What would you think about substituting the Maryland approach instead of Section 1, simply "The General Assembly shall provide by law for a militia". A thing does disturb me here and I'm very surprised that you haven't spoken up---I am not sure in the future with atomic, if you're thinking in terms of an atomic world, if your militia can be restricted to male citizens. You may have to call on--- I'm serious now. I am not sure at all, to meet modern needs, if a constitution really ought to restrict the militia to males.

MR. McLENDON: I think you're right.



MR. STOUDEMIRE: I wouldn't want to put in the Constitution "male and female". A woman who has had a lot of years experience in the WAC's really might be more capable of supervising an unorganized militia than some man that had never had a day of military training.

MR. WALSH: And as Sarah says, more and more there is a great deal of administrative work connected with any militia and I think more and more women are capable of taking over a lot of the functions.

MR. STOUDEMIRE: This thing would give the Governor the right to demand that a citizen take part, wouldn't it?

MR. WORKMAN: Yes. That's the essence of the whole thing.

MR. STOUDEMIRE: This is the reason I think that women---

MR. WORKMAN: By virtue of the fact that we've got a right important military tradition in South Carolina, I would suggest keeping our language and in this particular Section 1 omit the word "male".

MR. RILEY: There's a little difference in there, too, because Section 1 as it reads now, it says "shall" and this Maryland says "may".

MR. STOUDEMIRE: I was going to get around to that.

MR. HARVEY: And of course, you'd exempt persons that are in organized reserve or organized National Guard.

MR. WORKMAN: Yes. The old thrust and tradition here is, all this--- you are in the militia if you fall within these age brackets. Whether or not you are ever called is up to the General Assembly and to the circumstances under which your Governor calls---

MR. WALSH: Bob, on page 37, where does that come from?

MR. STOUDEMIRE: This is the Adjutant General. Letter from the Adjutant General---excuse me, that's Maryland. This is the discussion Maryland gave and I thought it might be useful to somebody.

MR. McLENDON: Shall we keep Section 1, striking out the word "male"? Have we reached that conclusion? If so, we will move on to Section 2. "The volunteer and militia forces shall (except for treason, felony and breach of the peace) be exempt from arrest by warrant or other process while in active service or attending muster or the election of officers, or while going to or returning from either of the same."

MR. STOUDEMIRE: That doesn't exempt him from much.

MR. WORKMAN: No. Well, that is a little antiquated in there, "the election of officers" is now no longer done.

MR. STOUDEMIRE: Gentlemen, I don't know whether I misinterpreted the General or not. On page 35 on Exempt from Arrest---if I interpret that like I think he said, I don't believe it at all. "----shall be exempt from arrest by warrant or other process while in active State service or while going to or returning from duty stations".

MR. WALSH: That "or going to and returning from stations" is too big.

MR. STOUDEMIRE: Well, would this exempt a man from a murder or a---

MISS LEVERETTE: That's a wholesale exemption.

MR. HARVEY: That's what you've got in there now.

MR. STOUDEMIRE: No, you haven't.

MR. WORKMAN: No. "Felony and breach of the peace". You see, he left out these qualifications.

MR. WALSH: The way he's got it, if you're going to training on a Sunday morning and driving through town 80 miles an hour, you couldn't be arrested.

MR. STOUDEMIRE: Workman, you started talking about en Section 2 as we now have it---something obsolete is what.

MR. WORKMAN: Election of officers. We could do this. We could say--- take it as it now exists, Section 2, just strike out "or the election of officers"---I think we still have what we want. See, he's talking about in either instance, either mobilizing two weeks or if you've gone for two weeks duty, you're immune going to and from that two weeks encampment or if you're going to a weekend drill or a Saturday night drill or whatever it is, you're also immune to and from that drill.

MR. HARVEY: What about duty stations like the General? Is that all right?

MR. WORKMAN: No. I think that the General is ill advised on that because while the duty station is normally taken to be---depend on your interpretation---whether or not it's the armory, whether it's the Gervais Street bridge to protect the bridge crossing or whatever it is, that becomes a duty station, but that "muster" is sufficiently inclusive in there.

MR. STOUDEMIRE: All right, pick up with "or attending muster ---or while going to or returning from either of the same". We're keeping that or not?

MR. WORKMAN: Yes.

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MR. McLENDON: All right. We move over to page 32. The "Governor may call out".

MR. STOUDEMIRE: That's a pretty fairly standard statement as to the right of the Governor.

MR. HARVEY: We haven't defined volunteer.

MR. WORKMAN: That is the organized National Guard.

MR. HARVEY: They haven't defined---you're using a word there---does it have a fixed enough meaning to use it without any previous---

MR. STOUDEMIRE: Do you need it?

MR. McLENDON: Section 1 doesn't say it's volunteer. It just says "The militia of this State shall consist of all able-bodied" people. The Governor shall have the power to call out the militia. Did we strike out the word "volunteer"?

MR. WORKMAN: No. We come down here to Section 2, "The volunteer and militia forces" so that's where the first use of it comes in. The volunteer forces are those who are in the National Guard. They volunteer for service. The militia are those who are subject to call whether or not they volunteer.

MR. McLENDON: I'm in the militia if I'm under forty-five. You would be a volunteer militia. I'm just in the militia.

MR. WORKMAN: Volunteers would be in the organized militia which is the National Guard. Unorganized militia includes all those people who are able-bodied in the age bracket---

MR. McLENDON: Why shouldn't the Governor be able to call me out? Suppose he needs 150 men and there're not but 20 in the volunteer militia forces.

MR. WORKMAN: He has that power.

MR. RILEY: Well, militia includes volunteer, though. Militia is everybody.

MR. SMOAK: The word "volunteer" has specific reference, doesn't it?

MR. WORKMAN: To the Guard. The Guard is a volunteer organization.

MR. RILEY: A man between the age of 18 and 45 is in the Guard is also in the militia.

MR. WORKMAN: That's right, but a man could be in the militia and not be in the Guard. All Guardsmen are in the militia. They are volunteer

militia---

MR. RILEY: What if they are fifty years old?

MR. McLENDON: They could be volunteer militia.

MR. WORKMAN: Yes. They're in the volunteer militia.

MR. McLENDON: Shall we leave the language as it is? Anybody got any strong feelings about changing it?

MR. STOUDEMIRE: Section 3 O.K., then. Now, Section 4. We are down to---gentlemen, a lot of this gets out of date. It might be well not to give the fellow a rank. He's now a Major General instead of Brigadier, isn't he?

MR. WORKMAN: Yes, and the Legislature ignored that thing when they promoted General Dozier and I tried to point out that it wasn't legal to do that because the Constitution says "Brigadier General". It still says "Brigadier General". The legislature made him a Major General.

MR. STOUDEMIRE: Now, we don't use the word "inspector" any more, do we?

MR. WORKMAN: No, except by title.

MR. SMOAK: Of course, that was sort of necessary, Bill, because from all the other states they were Major Generals and that's why they did it.

MR. WORKMAN: There were no complaints on the part of the public except that they just didn't go by the Constitution.

MR. STOUDEMIRE: Shouldn't the rank be left out in the Constitution?

MR. WORKMAN: What I think is on page 36 where we say, "There shall be a Military Department headed by the Adjutant General"---you see, he omits the "Inspector General". "---who shall hold the rank of Major General". Now, I would make that read this way, "That there shall be a Military Department headed by the Adjutant General whose rank, duties and compensation shall be prescribed by law".

MR. STOUDEMIRE: O. K.

MR. WALSH: He doesn't get any more money if you raise him up, does he?

MR. WORKMAN: Well, if it's federally recognized he does.

MR. STOUDEMIRE: Now, we're down to who picked him, aren't we?



MR. McLENDON: "The Governor shall, by and with the advice and consent of the Senate appoint such other---"

MR. STOUDEMIRE: "There shall be an Adjutant General elected by the qualified electors". Now, we've got to work on that.

MR. WORKMAN: Now, what we are doing, actually is, on page 32, considering Section 4 with the idea of perhaps replacing that with Section 4 which appears on page 36 and we have sub-paragraph a. under that. That "There shall be a Military Department---", Now we come to b which has to do, "The Governor shall appoint the Adjutant General". Now, we've got to discuss whether or not we want to put any qualifications and if so, what?

MR. HARVEY: "The Governor shall, by and with the advice and consent of the Senate, appoint the Adjutant General."

MR. WORKMAN: Well, it's a question of whether we want to put it there---"by and with the consent of the Senate" is---

MR. HARVEY: I don't agree with 4 b (1). He must have so many years service in the National Guard. I know we have a lot of retiring officers from active military duty who would be very qualified should the Governor choose to appoint---

MR. STOUDEMIRE: Most states just simply say that the Governor shall appoint the Adjutant General with a confirmation if you want it. They put a period as to any other qualifications.

MISS LEVERETTE: We don't set out qualifications for any other constitutional officer.

MR. HARVEY: I didn't mean to eliminate them entirely.

MR. SMOAK: There ought to be some qualifications for this thing.

MR. WORKMAN: I think that for a position of this sort that there must be military background. We've had some instances in Utah where a guy who was still in the grade of Captain in the reserves was made Adjutant General and he jumped from either Captain or Major---he jumped from Major to Major General and they'd had an awful flap on federal recognition of that. So, the objection that I have is the same as yours, Joe, that we don't want to limit it to the National Guards because there are competent people in other areas, retired army regular personnel, reserve personnel, Guardsmen who may not be in the service, from whom we can draw. So, it is a question of how we can make a general obligation to draw a person with military experience without getting too bogged down.

MR. SMOAK: You could add a phrase there to 4 b (1) if you wanted to, "Must have had at least fifteen years commissioned service in the South Carolina National Guard or the armed forces of the United States which would include everything.

MR. RILEY: I don't think we ought to get into qualifications.

MR. SMOAK: Dick, if you don't do that, you're going to end up with some fellow who'd be a fish out of water on all these exercises, conferences, things that he's going to have to attend to on a national basis.

MR. STOUDEMIRE: You can specify some conditions in law, can't you?

MR. WORKMAN: You make a requirement in most of your judgeships. In most the judgeships the man has---shall have been a practicing attorney for such and such.

MR. RILEY: That's in the Constitution?

MR. WORKMAN: No. I don't believe so.

MR. RILEY: We were talking yesterday, for instance, about the Governor appointing the people on the Board of Education and I think that would be desirable to put in there that they should have at least a college education, something like that, but I don't think that's constitutional. The Governor could appoint a guy with a third grade education, but I believe that's just---I don't believe that's constitutional.

MR. WORKMAN: The distinction I make here with respect to this is that the Adjutant General---that position could well not lend itself to any on-the-job training because the first day that that guy takes office he may become, in effect, the commanding officer of all the military in South Carolina. In my judgment, it is essential that a man with military background be in that job because of the fact that he may find himself facing what could really be catastrophic problems at any time.

MR. McLENDON: He has to have no particular qualifications now, does he except being elected by the public?

MR. RILEY: That can be anybody. I believe the General Assembly ought to put in qualifications, but I question whether it's constitutional.

MR. McLENDON: Well, you could say, "---and whose qualifications shall be as prescribed by law".

MR. STOUDEMIRE: They just simply say, "The Governor shall appoint an Adjutant General". I think it's almost---most of them just list this thing in a hurry. We are much more detailed than the average state on this, that is, with the newer enactments. New Jersey just brings it out as part of the Governor's Article.

MR. RILEY: I like the idea Mike mentioned. "---whose qualifications shall be prescribed by law". Just instruct the General Assembly to prescribe them.

MR. McLENDON: I think he ought to have some qualifications. How to get them?

MR. WORKMAN: All right. We go then---revert to paragraph a. above and say, "There shall be a Military Department headed by the Adjutant General whose qualifications, rank, duties and compensation shall be prescribed by law".

MR. RILEY: That's good.

MR. STOUDEMIRE: Now Alaska does. They bring the Adjutant General into this. "The Governor, as provided by law, shall appoint all General and flag officers of the armed forces of the State".

MR. McLENDON: "As provided by law" would give them the right to set the qualifications.

MR. WALSH: You think you want the Senate to confirm lower officers.

MR. STOUDEMIRE: I'm just showing that they recognized that there could be some qualifications.

MR. HARVEY: What do we do about lower officers?

MR. WORKMAN: We are down to Section 4 and we are using the language on page 36, saying that a. "There shall be a Military Department headed by the Adjutant General whose qualifications, rank, duties and compensation shall be prescribed by law".

MR. WALSH: Where you going to put that "by and with the consent of the Senate"?

MR. WORKMAN: That comes up on the next section. All we've done now is said that the department will be headed by the Adjutant General.

MR. RILEY: I guess from a draftsman's standpoint, Bob, we ought to say, "who shall have such qualifications, rank, duties and compensation as prescribed by law". I'm not sure about that.

MR. McLENDON: "Shall" needs to be in there. Anyway we'll let Bob worry about it.

MR. WORKMAN: Then we come to b, which is a method of selection and we say, "The Governor, by and with the advice of the Senate, shall appoint the Adjutant General" period. Now, we have omitted a reference which is probably included elsewhere in the Constitution, is the term of office. We likewise omitted that yesterday with the Superintendent of Education.

MR. STOUDEMIRE: Now, you notice that Pinckney recommends a continuous appointment, but if you give the Governor the right to appoint, he also has the right to fire, doesn't he?

MR. RILEY: Yes, but you've got the Senate in there, too. Would that make a difference?

MR. WALSH: Well, I think, by golly, that's an important thing to have in there because a lot of times the only way to get a good job out of a man is to let him know that if he doesn't do a good job, there's a door open.

MR. HARVEY: How about putting back "---qualifications, rank, duties term of office and compensation"?

MR. WORKMAN: Well, we're getting a little verbose. It cannot be, under the principle that we've already adopted that all appointments shall be for a specified term. We've got to make this for a specified term and I think it's quite possible that the term of office of the Adjutant General, not necessarily be co-terminous with that of the Governor, but at least it would be for a term. If we have a change of Governors, might well be as in the Russell-McNair situation, there could be no---the incoming Governor wouldn't want to take out the old one although he would have that right. I think that we agreed, but the language is getting a little sticky now.

MISS LEVERETTE: If you separate the appointment provisions from these others---

MR. WORKMAN: Why not just simply say that "The Governor, by and with the advice and consent of the Senate, shall appoint the Adjutant General whose term shall be four years".

MR. HARVEY: You going to specify four years?

MR. WORKMAN: Yes.

MR. McLENDON: Is that what he's elected for now?

MR. STOUDEMIRE: It would jive because the Adjutant General's term goes out. The current one would continue to serve until his term is up which would make it jive with the new Governor.

MR. WORKMAN: We might need some definition on that, though because if we just said, "---whose term shall be four years". If an Adjutant General were to die now and be appointed by a Governor in the Governor's mid-term, I don't think it would be proper that that four year go beyond the new Governor. We could put that thing in there---"---whose term of office would coincide with that of the Governor".

MR. RILEY: Yes.

MR. WORKMAN: You see, what we are doing now for the first time in South Carolina contemporary government is making the Governor's appointee---making the Governor's appointee in lieu of elective officers. We've recommended the State Superintendent and what we do here we ought to do for the State Superintendent also so we want to



now come to grips with some wording which would establish the term of office for these executive department heads that the Governor's going to appoint.

MR. RILEY: Well, isn't this as Mike said, the term co-terminous?

MR. WORKMAN: Yes.

MR. STOUDEMIRE: Superintendent of Education, I'm not sure you want a term in the Constitution at all because you've got a Board and you assume that this Board can fire him the next day.

MR. WORKMAN: That's right.

MR. STOUDEMIRE: We've used a man for thirty years almost and I would assume that the Board could fire him tomorrow if they thought he needed to be fired. The Board would need the right to get rid of him if they've made an error in judgment.

MR. WORKMAN: Let me wrestle with some language here for a minute. We could say, "There shall be a Military Department headed by the Adjutant General who shall be appointed by the Governor, by and with the consent of the Senate" period, paragraph. "The qualifications, rank, duties---". I've got to write it out before I can get it.

MR. STOUDEMIRE: William, we're leaving out one thing in this thing, though. It's now stated in the Article on Governor, but I think somewhere in here we need to say that the Governor shall be the Commander in Chief of a Military Department which is headed by the Adjutant General, you see.

MR. HARVEY: Well, most of them tie it back in. I was going to suggest that we go back to Section 3. Most of them tie it in with "The Governor shall be the Commander in Chief and shall have the power to call out---". I agree with you. I think that needs to be here.

MR. STOUDEMIRE: It needs to be here rather than---you might want to repeat it in the Governor's section again, but it ought to be here.

MR. RILEY: Well, we want to put that in Section 3, "The Governor shall be Commander in Chief".

MR. HARVEY: I think we ought to.

MR. WALSH: Ought to make that clear.

MR. McLENDON: The Governor shall be the Commander in Chief of the armed---of the military forces---

MR. STOUDEMIRE: Volunteer and militia forces are the terms we've used.

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MR. HARVEY: "And shall have the power to call out such forces."  
Why don't you just polish---we've got the thoughts here.

MR. WORKMAN: Bob, let me give you this. Section 4 a, we can say,  
"There shall be a Military Department headed by the Adjutant General  
who shall be appointed by and serve for the same term as the Governor".  
We haven't got that Senate confirmation in there. And then, "His  
qualifications, rank, duties---".

MR. McLENDON: We've all got the same idea. Why don't we let Bob  
draft---. Bill, we went back while you were thinking to Section 3  
and we added, or at least we're talking about making it read this  
way "The Governor shall be the Commander in Chief of the volunteer  
and militia forces and shall have the power to call out the volunteer  
and militia".

MR. RILEY: Strike out "either or both" and two commas.

MR. STOUDEMIRE: "---to repel invasions, to---"

MR. HARVEY: Now, we come to the last sentence in the old Section 4  
about the appointment of other staff officers or other officers.  
What are we going to do about that?

MR. RILEY: What are other officers are there?

MR. STOUDEMIRE: The first assistant to the Adjutant General, whatever  
rank he may have, has the Governor been appointing him?

MR. WORKMAN: I think that's appointed by the Adjutant General himself.  
He appoints a deputy.

MR. STOUDEMIRE: But that's contrary to this.

MR. HARVEY: No. "as the General Assembly may direct".

MR. WORKMAN: Well, you see, the Military Code for South Carolina  
provides a method by which officers are selected and pay and all that.

MR. RILEY: I say, let's strike this out. If we're going to give the  
Governor the authority to appoint the Adjutant General, then we don't  
need then for the Governor to appoint the staff.

MR. WORKMAN: Actually when we go back to Section 1 and we say the  
militia and so on "shall be organized, officered, armed, equipped  
and disciplined as the General Assembly may by law direct". There  
we envision a military code which goes to the basis of "officering".

MR. McLENDON: But we've settled on Section 4. We've got our thinking  
straight. Section 5.

MR. STOUDEMIRE: Now, this is all Confederate and I believe all the Confederate widows are dead.

MR. WALSH: Well, if they're not dead the General Assembly---

MR. STOUDEMIRE: Well, they transferred them to Welfare.

MR. HARVEY: I move to strike 5.

MR. WALSH: I second the motion.

MR. McLENDON: Well, where are we now, ladies and gentlemen?

MR. STOUDEMIRE: Back to bonds.

MR. WORKMAN: Mr. Chairman, let me ask whether or not you think it would be worthwhile for me to cite a few items from the New York Constitution, a copy of which I have here, which relates to matters that we discussed yesterday whether or not we acted on them. Unfortunately, I have only the one copy. Bob, you going to make an effort to get some additional copies of this.

MR. STOUDEMIRE: What date is it?

MR. WORKMAN: September 27th.

MR. STOUDEMIRE: I can get it for you.

MR. McLENDON: Aren't there other things that we can discuss rather than get into this bond thing.

MR. WALSH: I will say this, I followed the proceedings of that convention pretty closely and I think it had a rather unfortunate result although in some sections here I think we might get a little new thought or guidance on some of the thinking.

MR. STOUDEMIRE: I would like the minutes to show the appreciation to Mr. Knowlton for his help and also for volunteering to look into this corporation business more in depth if we should want to, without any charge.

MR. McLENDON: We're down to State and Local Indebtedness. It's 11:30 and we generally adjourn at 12:00 on Saturday and I think it would be most desirable to have John West here and also Mr. Sinkler. Are there any other loose ends?

MR. WORKMAN: Have we got anything to go through on our agenda?

MR. STOUDEMIRE: No. Except to talk about the agenda for the next time.

MR. McLENDON: Is there any help now in discussing some of this New York things or would you rather wait?

MR. WORKMAN: There are a few thoughts that I just want to drop in the fire because it's a question that we have had no real grip on. You remember earlier we discussed the possibility of some self-enforcing provisions of this and the legal members whose number is legion on this Committee thought it would be inviting litigation to do that, but I read to you what New York has included in their Constitution: "Any citizen of this State shall have the right to maintain a judicial action or proceeding against any officer, employee or instrumentality of the State or political sub-division thereof, to restrain a violation of the provisions of this Constitution, including unconstitutional expenditures. The Legislature may provide for such action or proceeding". Now, that may be opening up a real can of worms up there on that thing and I'm not suggesting that we go into this except they apparently had that same concern of allowing some action to be taken to insist on the compliance with the Constitution, other than an aggrieved person coming into court.

MR. WALSH: For instance, some county agency paying money which they know is in violation of the Constitution, but they say, "Well, it's a good thing and we're not going to do anything about it". Under that circumstance and individual could come in and would have standing.

MR. WORKMAN: That's right. This gives standing.

MR. SMOAK: This is worthy of consideration anyway.

MR. WORKMAN: Now, another thing which goes to the business of invasion of privacy that we were talking about and this is a little long, but I think it is worthwhile reading: "The right of the people to be secure against" (now, I'm skipping the standard search warrant--- this is a specific on interception) "the right of the people to be secure against unreasonable interception of telephone, telegraph or other electronic communications and against unreasonable interception of oral or other communication by electric or electronic methods shall not be violated and no order for such interception shall issue, but upon probably cause supported by the non-delegable personal oath or affirmation of the Attorney General or a District Attorney and the affidavit of a person having personal knowledge of the facts showing reasonable grounds to believe that evidence of a particular crime or information relating to the apprehension of the perpetrator thereof may be thus and not otherwise reasonably obtained. And particularly describing the person or persons whose private communications are to be overheard and the place and reason for such interception. Such an order may be issued only by the presiding judge of the Appellate Division in the Judicial Department where it is to be executed or by one associate justice thereof designated by the presiding judge for such purpose or by what supreme court judge so designated in each judicial circuit. Orders or warrants issued pursuant hereto shall be limited to a reasonable period of time and no such order shall authorize an interception except as permitted by statute." Now, here they specify the procedure which would protect law enforcement agencies in making these interceptions. They do it in such detail that I don't



think that we ought to consider putting that in a constitution. That we could content ourselves with the statement that we have made about unreasonable invasion, but that this language here might well be considered by the legislature for a procedure to set up such interception as may be necessary.

MR. WALSH: In our comment I think it might be well for us to insert a statement that we feel the legislature ought to positively set up a procedure whereby these law enforcement people can have the right to make interceptions.

MR. STOUDEMIRE: I will talk with Dan on this. We might have to put a clause in the Constitution---if you got a thing that says that your privacy cannot be disturbed, then you may have to have a positive mandate in the Constitution that the General Assembly can provide a method for law enforcement.

MR. WALSH: We may ought to check into that a little further.

MR. RILEY: Under your theory of statements being prohibitory or whatever it was, I think that's a good point.

MR. STOUDEMIRE: If like we had it yesterday---if nothing more, if that could be interpreted as saying the General Assembly could not, you see.

MR. WORKMAN: Well, what, in effect, this does is to say that when you follow this procedure, then your interception is reasonable.

MR. SMOAK: That protects everybody.

MR. WORKMAN: And when we say constitutionally that you are protected against "unreasonable" invasion, then---

MR. McLENDON: This says what is reasonable.

MR. WORKMAN: Now, on the point of waiver, there's no question---"except that a person held for the action of a grand jury, charged with such an offense other than one punishable by death or life imprisonment, with the consent of the district attorney may waive indictment by a grand jury and consent to be prosecuted on information filed by the district attorney." Now, as to eminent domain: "Private property shall not be taken or damaged, as the latter term is defined by law, for public use or purpose without just and timely compensation. Such compensation shall include the fair value at the time of taking, of good will of retail businesses as defined by the legislature". "Taking shall be subject to notice and public hearing as provided by law." I think what's here differs from our is that they point out "public use or purpose" which gets around this business of urban renewal, so we may think of that.

MR. RILEY: Also it's got the word "timely" in there. Does our have that in it?

MR. WORKMAN: I don't believe so.

MR. WALSH: However, the General Assembly lets you take it until you put the money up. Although there's a fallacy on that because I have a client and the money has been up for four years and the highway has been built and he hasn't gotten a penny.

MR. SMOAK: Of course, that protects him, too.

MR. WALSH: There are two sides to it.

MR. WORKMAN: Reference was made earlier along the line to this business that New York's concerned with the elimination of undue details of handling bail. Emmet, you brought that up. They say, "excessive or unreasonable bail shall not be required of a defendant or witness. The court may, except for a defendant charged with an offense punishable by death or life imprisonment, dispense with bail if reasonably satisfied that the defendant or witness will appear when directed." Which is a right sweeping sort of statement.

MR. SMOAK: Let me think about that one.

MR. WALSH: The records on that show that when you charge a fellow with speeding and tell him to be back Monday, he comes back next Monday whether you've got bail or not.

MR. McLENDON: But what if he didn't have that hanging over him somewhere down the line?

MR. WALSH: You just put out a bulletin on him---

MR. SMOAK: But the fact remains that you just can't turn everybody loose.

MR. WALSH: No, I don't think you would.

MR. WORKMAN: It's a permissive thing. The court "may" is what it boils down to. Now, in the field of education---this is some interesting language: "The legislature shall provide annually, shall make a provision for the adequate maintenance and support of a system of free public schools below the college level wherein all the people of the State may be educated". That "below the college level" is a term that we have not been using. The next paragraph says, "The legislature shall establish and define a system of higher education for all the people of the State, encompassing both public and non-public institutions by programs which may include free tuition, grants, fellowships and scholarships". And they wiped out what was called up there, I believe, the Blaine amendment. It forbade any aid to sectarian institutions and that's one of the things that a lot of the papers criticized.

MR. STOUDEMIRE: The New York study tried to point up that there is some evidence some place that the word "public" as applied to schools now might go beyond what we normally call high school, but I don't quite--- In other words, to me, in South Carolina's history, the word "public school" is so well defined as grades one through--not college.

MISS LEVERETTE: You have used in connection with that the word "children", too.

MR. WORKMAN: As to State Taxation and Finance---"Exemption from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real property or tangible personal property used exclusively for religious education or charitable purposes as defined by law and owned by any corporation or association organized and conducted exclusively for one or more such purposes and not operating for profit."

MR. WALSH: That's pretty good language in that. We might consider that.

MR. WORKMAN: Now as to intangibles: "Intangible personal property shall not be taxed ad valorem nor shall any excise tax be levied solely because of the ownership or possession thereof except that the income therefrom may be taken into consideration computing any excise tax measured by income generally". That gets a little involved in my non-accounting thinking, but it's something we can think on.

MR. RILEY: You ought to give that language to the man in the Attorney General's office that's going to look into that and see what he thinks about it.

MR. WORKMAN: It is this reading, Joe. "Intangible personal property shall not be taxed ad valorem". We wipe out the property tax. "nor shall any excise tax be levied solely because of the ownership or possession thereof except that the income therefrom may be taken into consideration in computing any excise tax measured by income generally".

MR. McLENDON: Generally is just going to tax you on your income from your stock and not the possession of it.

MR. WALSH: One of the theories behind that---you've got a six thousand dollar building, you've got to send a policeman around there to check to see that people don't break in. You've got to have fire protection for it. You've got to sewerage for it so you put a property tax on it. You can have fifty thousand dollars worth of stock in your pocket and nobody has to turn a hand.

MR. STOUDEMIRE: The State doesn't have to protect at all. I don't think we need get into that excise thing there. They do exempt stocks and bonds by a little bit more simple language than what we do.

MR. WORKMAN: Another item is Budgetary procedures. What they require is that the Governor submit to the legislature, not later than six days prior to the beginning of each fiscal year, a budget for the upcoming fiscal year. "The Governor shall, at the time of presenting the budget to the legislature, submit a bill or bills containing all the proposed items of appropriations and re-appropriations". So they charge the Governor with actual submission of the bill, but it also includes here, I think, that all measures of revenue shall originate in the House. Of course, this is simply a version of his draft into legislative form. Now, those are items that we have discussed in our deliberations up to the moment. There are a couple of other things which are right interesting here. One is to provide that every twenty years there shall be submitted automatically to the people the question, "Shall there be a convention to amend or revise the Constitution"?

MISS LEVERETTE: That was in their original Constitution, wasn't it?

MR. WORKMAN: I don't know. An interesting point in the fundamental Constitution of South Carolina is that at the lapse of a given time that the total Constitution was to be wiped out and start de novo and so it imposed on the General Assembly the necessity for replacing this Constitution which is going to go kaput in a given period of time unless they do something about it.

MR. HARVEY: This is in the original Constitution of South Carolina?

MR. WORKMAN: The fundamental Constitution by John Larson and Lord Shaftsbury. It never became really---

MR. McLENDON: The '68 or the '95.

MR. WORKMAN: No. This was in 1669 before there was a South Carolina. Another thing which I doubt that we want to get into at all, but New York envisions taking over as a State function all the public welfare in New York. They've got one whole section which provides for a year of transition during which period of time the State of New York becomes the public welfare agency down to the counties.

MR. WALSH: We have that now in this State for all practical purposes.

MR. WORKMAN: Except that here there would be, apparently, no county boards of welfare or anything of that type.. It would be completely centralized in the State. Now, one other thing. On urban renewal: "Wherever used in this Constitution, economic and community development purposes shall include the renewal and rebuilding of communities, the development of new communities, the programs and facilities to enhance the physical environment, health and social well-being of, and to encourage the expansion of economic opportunity for, the people of the State". Which is kind of a catch-all. Puts a definition in as to what constitutes urban renewal although they don't use that term. Community development.



MR. HARVEY: That's the way we decided to handle it. We put eminent domain and---left the definition of "public purposes" for a later time, didn't we?

MR. STOUDEMIRE: Yes. Local government.

MR. HARVEY: We are going to have to come back and grapple with such a definition.

MR. WORKMAN: There is a great deal more of interest in here, but these are the---and this runs, I think, to about 23,000 words. Our's runs now, Bob, as I recall, closer to 50,000. It was 47,000 some years ago when I counted them up. I forget the content of our original Constitution. Probably less than half that, but this is 23,000. It's got a lot of statutory stuff, some of which Emmet touched on yesterday by categorizing towns by name as well as by size. So, I don't think this is a model document in any sense of the word, but they've got some ideas.

MR. STOUDEMIRE: Well, really, the State taking over welfare is statutory.

MR. HARVEY: A lot of that is statutory.

MR. SMOAK: I'd hope that our final document would be shorter than that.

MR. HARVEY: What procedure are they using to implement this? They held a convention and now it has to be submitted to the people.

MR. WALSH: They're going to submit it as one document.

MR. WORKMAN: And that's another---

MR. WALSH: Great fight over that.

MR. STOUDEMIRE: The work of a convention almost has to be submitted as a document.

MR. WORKMAN: If it is submitted at all.

MR. STOUDEMIRE: If a convention assembles and it's not submitted, I think you'd better call out this militia we just got through.

MR. HARVEY: Well, the convention of 1895 was not submitted.

MR. STOUDEMIRE: That was 1895.

MR. WORKMAN: In fact 1790---

MR. STOUDEMIRE: I don't believe that a Constitutional Convention could assemble in Columbia, South Carolina now and adopt a constitution and walk out on the Statehouse grounds and say, "We now proclaim this as the fundamental document". Bill Workman would head through this---his editorial would be on the front page.

MR. WORKMAN: The history of constitutional conventions is, generally, that they are not submitted for ratification and in South Carolina they never have been. Of course the only one we had---in 1790 was not submitted and there was considerable doubt that it would have been approved had it been submitted, but it was, in effect, proclaimed as was '76 and '78 and then in 1895, of course it was adopted and became effective.

MR. RILEY: The problem in having it submitted is that every person would have something he objected to in the Constitution. It looks to me like it would be almost impossible to sell every individual on the whole document.

MR. WORKMAN: I think it is the only way that---now, I think that if a convention is assembled by delegates selected for that purpose, then the convention has within it the power to promulgate that Constitution without any ratification. That's generally been done. It has been done in South Carolina. But if it becomes necessary to submit the Constitution back to the people then I think the one drafting is about the only way you can do it because otherwise you're going to come back with a partial Constitution that's going to require another convention.

MR. STOUDEMIRE: All your philosophy now is that a new Constitution would not go into effect without the voting although I think they legally have the right to proclaim. I'm sure New Jersey's went to a vote. Alaska---Kentucky was voted down and Maryland is planning for a vote.

MR. WALSH: Kentucky did not have a convention. I can see a lot of difference in Kentucky and a convention elected specifically for the purpose of writing a new constitution.

MR. STOUDEMIRE: I had never dreamed of it not being submitted.

MR. RILEY: I think it would end up being submitted.

MISS LEVERETTE: You know if it's handled properly, I think it could be done and accomplished, but it would require a good deal of public education.

MR. SMOAK: It sure would.

MR. RILEY: I tell you something I do think. I feel kind of a need for, Mr. Chairman, and we might think about---we had some mention last meeting of primarily Bob and Bill, regarding the general ground rules of a constitutions per se. That is to say, as we were saying, the General Assembly has the authority to do anything that it is not specifically prohibited or directed to do in the Constitution---and I feel like that we ought to, at this point, have some---one page or two pages of ground rules drawn of the general philosophy of state constitutions and---that we might have benefit of in going through these different sections. Does anybody see what I'm talking about?

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MR. WALSH: There is a document on that. We have a copy of it. Not the Model Code.

MR. WORKMAN: No. It's put out by the National Municipal League.

MR. WALSH: And it's entitled, "How to Write a Constitution".

MR. RILEY: I think we ought to either adopt it by name or have that incorporated in our minutes and I think in the final document that we produce that it ought to serve as a forward to that document. You see what I mean, so that that would be the ground rules under which we were operating when we were revising the Constitution.

MR. WALSH: In other words, you want to say to the people, "Now, we went about this thing with these objectives in mind, with the thought that these things ought to be in the Constitution and that these things ought not".

MR. RILEY: That's right and anything that was not prohibited in here for the General Assembly to do, they could do and so forth, on down the line. So that when the question comes up, "Can we do this?" And they say, "Well, it's not in the Constitution, I don't guess we can" and they say, "Yes, but the Constitution itself, under the ground rules, that's not the way it was."

MISS LEVERETTE: In the final draft that might help to give us a little more consistency, too, about what we are doing in these different areas.

MR. SMOAK: I think that is a good suggestion, but I don't think we ought to adopt somebody else's book.

MR. WALSH: Take that book as a guide and let Bob maybe take a two page---

MR. RILEY: Could you do that, Bob and submit that with your working paper next time as a forward for the entire Committee's work and we could go over it next meeting.

MR. SMOAK: I've got that whole packet that the National Municipal Association puts out and it's got several things like this in it.

MR. STOUDEMIRE: Tell me again, briefly, what you want.

MR. RILEY: I think what they indicated in there, the considerations in revising a constitution. What I'm interested in is the ground rules.

MR. SMOAK: Not for us, particularly, but for general consumption.

MR. RILEY: Right and for us, too and we might change them as time goes on. When these things come up, Bill, for instance, makes a statement which is good constitutional law that if that's not prohibited in the Constitution, the General Assembly can do it anyhow so there's no use putting that in. A lot of people don't know that and I think

that somewhere in our "Forward", in our beginning, we ought to say that we are working under the general theories of constitutional law that anything not included in this Constitution, or prohibited in this Constitution, the General Assembly can do. And go on down, one, two, three, four.

MR. McLENDON: O. K. Anybody else got anything for the good of the program. Now, to the next meeting.

MR. STOUDEMIRE: I'd like to talk very, very briefly. We have delayed working paper #6 on Debt which I think would be the first order of business. Also, I think it's good that we really have--- try to have full attendance on that one because I do think that this is one thing we can do for the State of South Carolina even if the people buy none of the other stuff that we do. I really think that they would buy the debt thing. The basic thing here really is on this debt, is, shall you allow the General Assembly to provide the basic regulations or how much restriction shall you put in the Constitution. That's your basic thing that's going to govern the whole thing. In other words, restriction, such as having the people vote. Restrictions as to some type of maximum which can be issued versus letting the General Assembly do all of this.

MR. WORKMAN: And whether or not there will be categories.

MR. McLENDON: Now, there's so much of this stuff and it's so detailed and complicated---is there any way that we can get some draft of your ideas or Bill's ideas or Sinkler's ideas down before us so that the rest of us who are not adept in this finance and debt section would have something to look at.

MR. STOUDEMIRE: Well, you have Sinkler's ideas embraced in that paper called the "Draft". You see, I outlined some things there in advance which I don't think---Huger talked to me about briefly, he thinks I'm in disagreement with him.

MR. McLENDON: Well, we bog down every time on this and so much detail and so much conversation, we just don't accomplish anything.

MR. STOUDEMIRE: You are going to have to make these basic policies, I think. First, if you want to look at it actually, the State of South Carolina has no debt restrictions on it. Then, to me, I don't think the General Assembly has violated this principle. Now, then, do you want to leave it directly in the hands of the General Assembly or do you want to do like we did in this working draft before, say that you can issue gasoline tax bonds three times the aggregate and so on.

MR. WALSH: I think yiu're right, Bob. For all practical purposes, there are no debt limitations now and there's no use for us to go into all this folderol if we want to leave them free.



MR. STOUDEMIRE: All right. As I point out in your paper, we have voted and voted and voted on upping the debt limits for local government. I checked, except for 1924, not a single one of those things have been defeated at the polls. In other words, people have been, I don't think, taking debt limits seriously when they vote. They have been defeated occasionally in the county concerned. You might get a different thing now---an amendment now in the future can be submitted only to the county involved and people may start looking at these things much more than what they have in the past.

MR. WORKMAN: We've got to think, also in terms of public acceptability because even the fact that the bond issue has been approved---

MR. STOUDEMIRE: Then on the agenda for the next time, too, is the Governor and the Judiciary and I don't believe that we're going to be able to handle debt, the Governor and the judiciary all in---

MR. WALSH: How about tieing debt and the Governor.

MR. HARVEY: We've got the property classification stuff, too---

MR. STOUDEMIRE: Yes and the holdover. Now, when you get to the Governor, I don't think there's too much in there that you can't agree upon. In other words, you can solve the question, Shall we allow him to be re-elected. But, within the Governor, I think, is the over-all fundamental idea of a separation of power feeling. In other words, shall you give him broad, appointing power that he does not now have or shall you not? Shall you make him the supervisor of State administration? That is basic to your Governor's office. If you leave it as it is now, then you are not giving him that authority, you see, and so I think then that you can be mulling this around. What is the role of the Governor? Not the details of how long he serves, that he can call out the militia and that he can grant a reprieve, but the basic question is his authority.

MR. WALSH: Mr. Stoudemire, just one thought on that. I think that we ought to invite the suggestions and comments of the present Governor and every other Governor---every other person that served as Governor. Wouldn't that be the proper thing to do?

MR. McLENDON: Yes, I would think so. Certainly, McNair and Hollings and Russell---

MR. WORKMAN: Thurmond, Timmerman---

MR. WALSH: Is it worthwhile to consider it?

MR. RILEY: I don't think so. If a man has been Governor eight, ten years ago, what's he going to add to the real technical questions---

MR. WALSH: I wonder that, too. It may be somebody who's presently Governor.

MR. RILEY: I think a representative of the executive staff should look into it and they should see if they have any suggestions, but I wouldn't see any usefulness in going all the way back.

MR. SMOAK: The present Governor might not feel he is in a position to---

MISS LEVERETTE: Aren't we actually facing, too, sort of a basic decision as to whether or not we're going to have a weak or strong executive.

MR. STOUDEMIRE: This is the point I'm raising, Sarah. I'm not trying to influence members now, one way or the other, but I think you should be giving some thought to this position because it is basic to the over-all executive article.

MR. WORKMAN: Dick, I can be of some help in this because about seven or eight years ago I queried all living ex-governors on this particular point. So, I've got in my file their responses including Dick Jefferies so I've got some reaction from the past governors, I think, except Byrnes. He did not respond at that time. I've got some journalistic inquiries into this that I can bring to shed whatever light they might---

MR. RILEY: I don't know, rather than having a perspective of the present or past governors, it would be best to have a perspective of a governor of another state or professional political scientist in another state who could take another state's views that has a strong governor and give us their views on it.

MR. STOUDEMIRE: A political scientist from another state is going to tell you to give the governor all appointing power---Dick, I really don't think it would pay you to pay his travel. It's in your Model.

MR. RILEY: If that's the case, I don't see that we need to do a whole lot of outside---

MR. STOUDEMIRE: I am going to see Governor McNair Wednesday on State Employees' business and I do owe him the courtesy, I think, to ask him if he has any comment. Actually, I think the Governor ought to be allowed to do this orally if he sees fit. I have told all these State officials I have written that these meetings are public and that which they write might be spread around. None of them had anything to hide thus far. You could make a statement that would be very political. I wouldn't want to have him make it and not realize that he may see it again.

MR. McLENDON: All right. Any other points or shall we adjourn.

MR. STOUDEMIRE: I put the Legislature way down on this list simply because I hope that the federal court will have ruled. No use to argue that if we got to---

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MR. WALSH: We're going to take up all of our items left over from this plus debt and the governor.

MR. STOUDEMIRE: Dick, I will proceed on your suggestion if I have time.

MR. HARVEY: We limited ourselves to one day. We're going to meet into the evening and have a snack lunch. Are we going to meet into the evening.

MR. McLENDON: I wouldn't think so. I believe if we stay here from 10:00 o'clock to 6:00 we will be ready to quit.

MR. RILEY: So, we are going to take up the bonded debt section and the executive and that's---

MR. STOUDEMIRE: Taxation and the holdovers.

MR. SMOAK: Is the form of county government, that subject been raised at all---

MR. STOUDEMIRE: No, not really. It's coming up in about a month.

MR. WALSH: We sure need some good, thorough prior work. Maybe you've got some people already working on it.

MR. STOUDEMIRE: Dr. Bain is doing that, along with me, you probably have about as capable a person as you're going to get with long years of Virginia experience, South Carolina experience and Georgia.

MR. WALSH: Would you explore when you talk with him when we get to be such an urbanized State that when a city of something reaches a certain population they're automatically entitled to a direct representative in the House. They have it in Virginia and a number a states.

There being no further business the meeting adjourned at 12:00 o'clock

W. D. Workman, Jr.  
Secretary

Nettie L. Bryan  
Recording Secretary

October 7, 1967

Items Delayed

Article I, section 16. Search Warrant provision, especially how to word invasion of privacy. Discussion held with Attorney General, but proposed draft still pending.

Education. Assure credit of state not permitted for religious and other private institutions when considering indebtedness and local finance.

Article I, section 6 and 7. Delayed until property tax decision is made.

Article III, section 29. Delayed until property tax decision is made.

Article VIII, section 3. Delayed until property tax decision is made.

Article VIII, section 6. Delayed until property tax decision is made.

Article X, section 1. Delayed until letters received from advisors.

Article X, section 4. Exemption of property. Parts of this section delayed. Stoudemire to prepare wording for discussion.

Article X, section 5. Delayed until letters received from advisors.

Article X, section 5. Stockholders in banks, taxes on shares. Delayed until letters received.

Article X, section 6. County purposes, etc. Delayed to be considered as part of Local Government.

Article X, section 13. Exact wording to be worked out by Stoudemire.

Article X. New Section. Legislative Audit. Will be discussed on October 27.

Article XIV. Name of Article. Corporation? Commerce? Other?

Public Utilities Statement. Statement on regulating pending.

Preparation of General Rules governing preparation of constitution as suggested by Senator Riley.