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CONSTITUTION REVISION BY COMMISSION IN CALIFORNIA

by *Judge Bruce W. Sumner*

Chairman, California Constitution Revision Commission

In 1962, the voters of California adopted an amendment to their constitution which launched a vast project to modernize and update the state's antiquated constitution. Until 1962, the only certain way to revise the California Constitution was by a constitutional convention. While Article XVIII, Section 1, provided for amendments proposed by the Legislature, it was generally felt that judicial construction of the term "amendment" might preclude overall constitutional revision. Under procedures authorized by the constitution, the Legislature, in 1961, adopted a constitutional amendment that authorized the Legislature to act, in effect, as a constitutional convention by allowing it to submit proposals for revision of the constitution to the voters. The amendment was placed on the November 1962 ballot and was approved by the voters by a margin of more than 2 to 1.

To implement this new amendment, the Legislature, in 1963, created the Constitutional Revision Commission, which was later called the Constitution Revision Commission. The charge to this Commission was that it provide the Legislature "with facts and recommendations relating to the revision of the Constitution of the State of California." The original legislation creating the Commission provided that it be composed of not more than 50 citizen members appointed by the Joint Committee on Legislative Organization and six legislative members. Subsequent legislation increased the authorized membership to 60 citizen members. Under the enabling legislation the Commission selected its own chairman, adopted its own rules and procedures and reported its findings to the Legislature. Members of the Commission were to "serve without compensation" but each member was allowed actual expenses incurred in the discharge of his duties, including travel expenses. Necessary staff and materials were provided by the Joint Committee on Legislative Organization.

The Revision Commission organized its study of the Constitution on an article-by-article basis, usually meeting monthly for two- or three-

day sessions. The Commission chairman determined which articles would be considered and named committees of the Commission to study the articles in depth. The committees reported their recommendations to the full Commission for consideration and action. Before an article was considered by a Committee, a background study was prepared by the Commission staff and in some cases, by a special consultant under staff supervision. The study included an analysis of the provisions of the article being considered, relevant facts of other articles, relevant constitutional provisions in other state constitutions and other source material.

After studying an article in detail the Commission adopted its recommendations for revision of both the substance and the language of the article, the language being prepared by a drafting committee of the Commission that acted on the Commission decision and then reported proposed wording to the Commission for its approval.

In approaching the overall challenge of constitutional revision, the members of the Commission kept the inherent powers of state government in mind. Under the tenth amendment to the United States Constitution, "the powers not delegated to the United States . . . are reserved to the states respectively or to the people." Because of this reservation of power it is not necessary for a state constitution to authorize the Legislature to enact legislation in specific areas. What, then, should a constitution contain? First, it should establish the fundamental structure or framework of state government by providing for the legislative body, a court system and executive authority. Secondly, it should contain desired mandates that the Legislature adopt certain laws. Thirdly, a state constitution should prohibit legislative action in certain areas. These prohibitions are usually contained in a bill of rights section where, for example, it can be stated that no laws shall be passed which abridge freedom of speech or religion.

On February 22, 1966, the Commission made its first report to the Legislature with recommended revisions of seven articles of the constitution dealing with the legislative, executive and judicial branches of government and the civil service system. All but the civil service article were placed in one ballot proposal. This measure rewrote approximately one-third of the constitution. The momentum obtained by the passage of this Commission proposal through the Legislature by the required 2/3 vote caused the campaign for voter adoption to proceed virtually without opposition. A majority vote was necessary for passage, but the people approved the measure by a 73.7% vote. Along with the changes contained in the revision, 16,000 words were deleted from the constitution.

Under the 1966 Revised Constitution, four articles took the place of six former ones. The new articles provide as follows:

Article 3: This is the so-called "separation of powers" article. It retains with only changes in wording the concept of the separation of the different branches of government.

Article 4: This "legislative article" provides for annual sessions of the Legislature of unlimited duration and allows the Legislature to set its own compensation. A conflict of interest provision is added, along with some restrictions on legislators' expenses. Since 1911 California has provided for the right of initiative for statutes and constitutional amendments. The initiative was retained but the number of signatures necessary for initiative statutes was reduced to give incentive to persons wishing to sponsor initiative petitions to use statutory change rather than constitutional amendment.

Article 5: This is the "executive article". As revised it authorizes the Legislature to allow the Governor to reorganize the executive branch, thereby giving him more control over his area of responsibility. A new provision is added authorizing the California Supreme Court to determine when the Governor is disabled and should be removed from office. The Attorney General's salary was removed from the constitution and the Legislature was given control over his budget.

Article 6: The "judicial article" is rewritten to increase the experience requirement for Judges of the Superior Court to ten years and provides that the Legislature can establish procedures where judges' names will not appear on an election ballot if they have no opposition and no one petitions to have the name appear. The article also provides that a judge charged with a serious crime is disqualified without loss of pay from sitting until the matter is determined.

These are the highlights of the 1966 revision. In 1968, the Commission proposed what became Proposition 1 on the November ballot. This recommendation revised the articles dealing with education, state institutions, local government, corporations and public utilities, land and homestead exemption, amending and revising the constitution, and civil service. In spite of strong legislative support, Proposition 1 failed to receive the necessary majority vote of the people for its adoption. An analysis of this rejection caused legislative and commission leaders to conclude that too many diverse subject areas were included in the 1968 proposal and that subsequent propositions should contain either the revision of one article or a series of non-controversial deletions from a number of articles.

In 1970, four ballot measures were submitted at the June election dealing with local government (Prop. 2), public utilities and corporations (Prop. 3), state institutions and land use exemptions (Prop. 4), and civil service and revision of the constitution (Prop. 5). Only Proposition 2 was adopted. This measure, however, is one of the most important achievements of the Commission for it strengthens local government in California and reduces an article that was more than 10,000 words long to less than 1,000. Some of the changes that resulted from this revision are as follows:

1. Requires Boards of Supervisors to be elected; the former constitution permitted them to be appointed.
2. Lets county government set the salaries of district attorneys and auditors; the Legislature formerly set these salaries.
3. Allows counties to establish new departments without legislative approval, which was formerly necessary.
4. Prohibits annexation or consolidation of a city without voter approval; the former constitution was uncertain.
5. Permits all cities to be charter cities regardless of population.
6. Requires voter approval for county consolidation or formation of new counties.

In the fall of 1970, four additional ballot propositions originating with the Constitution Revision Commission were presented to the people. All four of these measures were adopted, effecting the following major changes.

The so-called civil service article is revised with few substantive changes except to give additional exempt positions to the Lieutenant Governor and to authorize inclusion in the civil service system of certain non-state employees in programs taken over by the state.

Another ballot proposition approved in November 1970 amended sections of the constitution which were unusually wordy and restated them in clear and concise terms. This same proposal deleted material generally felt to be obsolete, such as the constitutional prohibition against dueling.

A third proposal rewrote the article providing for amending and revising the constitution by rewording lengthy and unused procedural provisions for calling constitutional conventions and added a provision that would force equitable representation at constitutional conventions called in the future. The amendment also permits the Legislature to correct errors found in proposed amendments before they are submitted to

the voters and provides that constitutional amendments proposed by an initiative or by the Legislature will take effect on the same day unless the measure otherwise provides.

The fourth proposition deleted obsolete provisions relating to social welfare.

In 1971 the Constitution Revision Commission completed its recommendations for revision of the California Constitution. These recommendations are now before the Legislature and may be submitted to the voters in 1972.

The prospects for future success are excellent, providing the Legislature maintains its interest and the Governor gives his support. There are some commission recommendations in sensitive areas such as taxes and exemptions that may be too controversial to be adopted, but regardless, an important chapter has been written in California Constitutional Law. This is true not only because one-half of our constitution has been revised but because of the public attention given to controversial areas in our Constitutional Law.

A Commission approach to constitutional revision has some advantages over the convention method. One of these is the opportunity that the Commission approach affords for a detailed study of the measure under consideration. Another advantage is that the Commission approach minimizes the political grandstanding and partisanship that has accompanied some constitutional conventions. Finally, the commission process is much less expensive than the convention method. On the con side, a convention creates interest in the project and may result in bolder proposals for reform. It also usually acts within a set time limit which may force the reaching of a consensus while interest is still at a peak.

Revising a state's constitution is much more difficult than writing one without precedence. The claim is always made that something is intended by deletion even though the deleted material has no meaning in law or logic. To succeed, legislative and public support is necessary, partisan opposition is fatal, but I am sure that all the members of the Commission would join me in saying that the effort is worth it.

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